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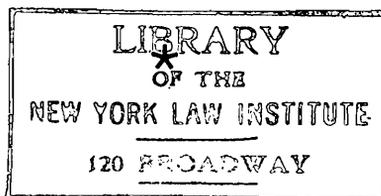
UNITED STATES MARITIME COMMISSION

—
VOLUME 1
—

DECISIONS OF THE
UNITED STATES SHIPPING BOARD,
DEPARTMENT OF COMMERCE UNITED
STATES SHIPPING BOARD BUREAU,
AND UNITED STATES MARITIME
COMMISSION

UNDER REGULATORY PROVISIONS OF THE
SHIPPING ACT, 1916, AND RELATED ACTS
NOVEMBER 1919 TO NOVEMBER 1938

REPORTED BY THE COMMISSION



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UNITED STATES MARITIME COMMISSION

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1 U. S. M. C.

DECISIONS OF THE
UNITED STATES SHIPPING BOARD,
DEPARTMENT OF COMMERCE UNITED
STATES SHIPPING BOARD BUREAU,
AND UNITED STATES MARITIME
COMMISSION



EX PARTE 1
ALASKAN RATE INVESTIGATION

Submitted May 19, 1919. Decided November 14, 1919

Rates, regulations, and practices of common carriers by water operating between Puget Sound and Alaskan ports not shown to be unreasonable. Respondents' practice of assessing freight charges on weight-or-measurement basis, ship's option, and rule under which steamers will not move to private docks for less than 25 tons of freight not shown to be unreasonable. Present method of handling cannery traffic not shown to work any undue discrimination.

Rates charged for transportation of blacksmith coal and farm products from Anchorage to Juneau, Alaska, held relatively unreasonable and unduly discriminatory, to the extent that they exceed rates contemporaneously maintained, on like traffic, from Puget Sound ports to Juneau.

W. H. Bogles for Alaska Steamship Company; *B. S. Grosscup* for Pacific Steamship Company; *L. L. Bates* for Seattle Steamship Company; *S. J. Wettrick* for Seattle Chamber of Commerce and Commercial Club; *W. L. Clark* for Association of Pacific Fisheries; *Phil Ernst* for Nome Chamber of Commerce; *Ed. G. Russell* for Commercial Association of Juneau; *J. J. Kennedy* for Alaska Labor Union, Local No. 4, of Juneau; *R. M. Courtney* for Chamber of Commerce of Anchorage; *E. G. DeStewiger* for Ellamar Mining Company; *M. G. Munkly* for Thlinket Packing Company.

REPORT OF THE BOARD

By schedules filed to become effective March 3, 1918, and later dates, the Alaska Steamship Company and the Pacific Steamship Company proposed to increase all-water rates between Puget Sound and Alaskan ports. Upon protests filed on behalf of Alaskan commercial organizations and shippers, the Alaska Steamship Company on February 25, 1918, was ordered by the Board to suspend the operation of its increased schedules. On March 15, 1918, the Board, allowed the suspended schedules, and others which had been held in abeyance, to become effective, subject to revision if after hearing the increases should be found to be excessive. Thereupon the Board, of its own motion and pursuant to the provisions of the Federal

shipping act of September 7, 1916, instituted a general investigation into the rates, regulations, and practices of common carriers by water engaged in the transportation of property between ports in the State of Washington and ports in Alaska. The carriers serving Alaska and representatives of Alaskan industries, commercial organizations, and shippers were duly notified of the proposed investigation, and hearings were held in May and June, 1918, at Seattle, Wash., and at Ketchikan, Juneau, Cordova, Seward, and Anchorage, Alaska.

The port-to-port Alaskan business is handled principally by the Alaska Steamship Company and the Pacific Steamship Company, hereinafter called the Alaska Company and the Pacific Company, respectively, and at certain seasons of the year by the Seattle Steamship Company and the Humboldt Steamship Company. The testimony and data with respect to these two latter companies are very meager, but that which was offered in respect to their rates indicates that the rates of the Seattle Company are generally in line with those of the Alaska and Pacific Companies, while the Humboldt Company's rates are as a rule lower than the rates of the two latter companies. It was testified that the Humboldt Steamship Company was able to operate in the Alaskan trade on a lower schedule of rates only because it engaged in more remunerative trades during four months of the year. This company, although seasonably notified, was not represented at any of the hearings.

THE RATE SCHEDULES AS A WHOLE

The protests in effect are against the rate schedules of the Alaska and Pacific Companies, respectively, as a whole, and the general investigation instituted by the board involves primarily the determination of the reasonableness of respondents' rate schedules. The carriers urge that the primary object of the increased rates hereinbefore referred to was to provide additional revenue urgently needed by them to meet increasing costs of operation. Protestants, on the other hand, contended that said rates were excessive and unreasonable. To illustrate the general range of increases, a table showing the old and new rates on a number of representative commodities, together with the distances from Seattle to representative ports of destination on the southeastern, southwestern, and Nome routes, is presented below. The southeastern route embraces the coastal section between Dixon Entrance and Cape Spencer; the termini of the southwestern route are Cape Spencer and Unimak Pass; and the Nome route extends northerly beyond Unimak Pass and via St. Michael to points on the Yukon River. Rates are stated in dollars and cents per ton of 2,000 pounds or 40 cubic feet, whichever produces the greater revenue, unless otherwise specifically provided.

Commodity	Seattle to—								
	Ketchikan, 754 miles			Cordova, 1,603 miles			Nome, ¹ 2,500 miles		
	Old rate	Present rate	Increase	Old rate	Present rate	Increase	Old rate	Present rate	Increase
			<i>P. ct.</i>			<i>P. ct.</i>			<i>P. ct.</i>
Boots and shoes.....	\$6.50	\$7.50	15½	\$15.00	\$15.50	3	\$15.50	\$23.00	48
Canned vegetables.....	6.50	7.50	15½	11.50	12.00	4	15.50	23.00	48
Cement.....	4.25	4.75	12	8.00	8.25	3	15.50	22.75	46
Clothing.....	6.50	7.50	15½	15.00	15.50	3	15.50	23.00	48
Structural iron.....	6.50	7.50	15½	12.50	13.00	4	15.50	23.00	48
Machinery.....	6.50	7.50	15½	12.50	13.00	4	15.00	22.50	50
Meats (not refrigerated).....	16.60	18.50	12	30.00	30.50	2	32.00	41.00	28
Meats (refrigerated).....	23.10	25.70	11	45.00	45.50	1	40.00	62.50	56
Salt.....	3.60	4.75	36	5.00	6.25	25	15.50	22.75	46
Sugar.....	6.50	7.50	15½	11.50	12.00	4	15.50	23.00	48½

¹ Rates to Nome are landed rates and include cost of lighterage at Nome.

The foregoing table has been compiled from exhibits of record and tariffs of the Alaska Company on file with the board. Rates of the Pacific Company vary in some instances from those of the Alaska Company, and its increases are allocated in a different manner, but for the purposes of this case such variations are not material.

The additional revenue estimated to be derived by the Pacific Company from increased rates in 1918 appears in the following table:

	Actual, year 1917	Estimated, year 1918	Increase
Freight revenue.....	\$1,351,052.46	\$1,701,704.80	\$350,652.34
Passenger revenue.....	899,896.12	745,304.67	45,408.55
Miscellaneous.....	159,655.93	167,638.72	7,982.79
Gross earnings.....	2,210,604.51	2,614,648.19	404,043.68

As an offset to the estimated additional revenue accruing to the Pacific Company from increased rates, that company shows that its cost of operations in 1918 will be found to have been materially greater than in 1917. A table indicating the sources of increased operating costs follows:

Increased costs of operations, 1918 over 1917, on Alaska steamers of Pacific Steamship Company, not including overhead or charter hire payable on leased vessels

	Year 1917	Per cent of total	Year 1918	Per cent of total	Increase 1918 over 1917	Per cent increase
Fuel.....	\$253,241.78	15.10	\$401,703.07	17.58	\$148,461.29	58.6
Wages.....	368,519.30	21.98	449,225.03	19.68	80,705.73	21.6
Longshore.....	180,319.47	10.76	216,383.36	9.48	36,063.89	20.0
Provisions.....	227,187.29	13.56	319,657.34	14.02	92,470.05	40.7
Repairs.....	323,646.37	19.30	516,215.96	22.62	192,569.59	59.5
Insurance.....	212,330.75	12.66	256,872.37	11.26	44,541.62	20.8
Miscellaneous.....	111,284.02	6.64	122,412.42	5.36	11,128.40	10.0
Grand total.....	1,676,528.98	100.00	2,282,469.55	100.00	605,940.57	-----

The Alaska Company did not submit an estimate of additional revenue calculated upon increased rates or an estimate of increased operating costs. The record discloses, however, that crews' wages paid by the Alaska Company in May, 1918, were 40 per cent higher than in 1917. Based on actual 1917 consumption the estimated increase in cost of fuel oil in 1918 will amount to \$140,346.87. During the first three months of the year the cost of meals advanced 20 per cent over the 1917 basis. These cited increases are typical of increased operating costs of the Pacific Company on similar items. The conditions surrounding the operations of the Pacific and Alaska Companies' fleets are not materially dissimilar, and it may be assumed that the increases in earnings and operating expenses of the Alaska Company will be relatively as great as those of the Pacific Company.

The fundamental obligation of the carriers under the shipping act is to charge only such rates as are just and reasonable. The reasonableness of the rates depends largely upon whether they yield a fair return upon the value of the carriers' property devoted to the public service. *Smith v. Ames*, 169 U. S. 466; *Minnesota Rate Cases*, 230 U. S. 352; *San Diego Land and Town Company v. National City Company*, 174 U. S. 739; *Wilcox v. Consolidated Gas Company*, 212 U. S. 19.

The Alaska Steamship Company owns the vessels which it operates in this trade. With the exception of one vessel owned by it the Pacific Company, prior to and at the time of the investigation, was operating vessels held under charters from other companies. By the terms of these charters the carrier obligated itself to pay the cost of ordinary maintenance, an annual charter hire of 10 per cent of the agreed value of the vessels for the year ended November 1, 1917, 11 per cent for each of the next three years, and 12 per cent thereafter. The figures shown in the last preceding table are exclusive of this charter hire; that is, the charter hire has not been charged as an operating expense.

The following data as to the value of the fleets, capitalization, volume of traffic, operating revenues, expenses, and income of the Alaska and Pacific Companies, respectively, have been compiled from testimony and exhibits of record:

[Dec. 31, 1917]

	Alaska Steamship Company	Pacific Steamship Company
Value of fleet.....	\$3, 178, 574. 60	\$3, 017, 398. 14
Capitalization.....	\$4, 500, 000. 00	\$1, 000, 000. 00
Operating revenues.....	\$4, 081, 590. 45	\$2, 210, 604. 51
Operating expenses.....	\$2, 876, 898. 00	\$1, 890, 426. 05
Net operating revenues.....	\$1, 204, 692. 45	\$320, 178. 46
Taxes.....	\$230, 231. 69
Depreciation.....	\$236, 500. 62	\$140, 445. 62
Net operating income.....	\$743, 432. 46	\$179, 732. 84
Volume of traffic (tons).....	499, 378	256, 654. 4

¹ Including taxes.

The values of the fleets shown in the foregoing table are book values. It was vigorously insisted by the carriers that such values were not fairly representative of the actual values of their fleets. A marine surveyor and naval architect, who had appraised the fleets in May, 1918, and who testified on behalf of both companies, placed a value on the fleets 100 per cent higher than the book values herein given. The auditor of the Alaska Company testified that the company had sold one of its vessels in 1916 for more than twice its book value. The unprecedented demand for tonnage, the prevailing high prices of labor and material entering into the construction of vessels, and the practical impossibility of reproducing or duplicating the fleets were advanced as the main contributing elements of increased value. In addition to the vessels the carriers have other property investments in the way of wharves, docks, lands, terminal and other facilities devoted to the Alaskan service, the extent and exact value of which do not appear of record.

The capitalization represents the total amount of stock issued and outstanding on December 31, 1917. Neither company has any bonds or funded debt outstanding. In respect to the Pacific Company, the operating revenues and expenses are those properly chargeable to the Alaskan trade. The volume of traffic figures of both companies include Alaskan business only. Of the Alaska Company's total 1917 net income of \$743,432.46, however, only \$478,691 was earned in the Alaskan service. It was testified on behalf of this company that the net book value of its property and assets employed in the Alaskan service in 1917 was in excess of \$5,000,000, and that on the basis of the valuation of the fleet, as determined by the marine surveyor and naval architect, the value of said property and assets amounted to more than \$10,000,000. Thus it appears that, without charging off any portion of the loss due to the wrecking of the steamer *Mariposa*, in 1917, the earnings of the Alaska Company amounted to 9½ per cent on a net book value of \$5,000,000 and to 4¾ per cent on said appraised value of its property devoted to the Alaskan service. The Pacific Company's earnings were relatively lower than those of the Alaska Company.

Owing to the peculiar geographical, industrial, and economic conditions of Alaska, its transportation problem is decidedly unique. In the early part of the year the preponderance of traffic is northbound with very little southbound traffic. Just the reverse condition obtains in the fall of the year. The movement of traffic is poorly balanced, in consequence of which the transportation facilities are only partly used at one season of the year and are insufficient at other seasons to handle the traffic. Obviously the cost of operating transportation facilities under these conditions is far in excess of what it would be if the movement of traffic were properly balanced.

The routes traversed by the vessels of these carriers are beset with dangers. The shores of Alaska are exceedingly rocky and consist almost entirely of elevated islands and peninsulas carved by glacial action and separated by deep and narrow fiords. Rugged mountain ranges with sharp jagged peaks lying just beneath the surface of the water, and currents of great volume flowing through the bays and tortuous passages along the coast constitute an ever-present menace to navigation. During a considerable portion of the year the vessels are compelled to fight their way through ice and snow, and on the Nome route are frequently icebound for several days at a time. Storms are of frequent recurrence, often rendering the discharge of cargoes impossible and making it necessary for vessels to steam for the open sea and ride out the gales. Operating costs of these carriers have been rapidly mounting for some time and continue to rise. Not only have substantial advances in wages been made, but demands by employees for other increases were pending at the time of the hearings. Moreover, it was asserted that the efficiency of labor had materially decreased. The cost of fuel, insurance, and other important items entering into the operation of steamers has greatly increased. The estimated additional revenue to be derived by the Pacific Company from increases in rates is \$201,896.89 less than the estimated additional operating costs for 1918. While generally the recent increases in rates are not large, yet in some cases they are as high as 50 per cent; but manifestly the reasonableness of the rates can not be determined by considering only the amount of the percentage of increase, which may indicate that the former rates were too low rather than that the present rates are excessive. The freight movement on the Nome route, where the most substantial increases apply, is almost entirely northbound, the southbound loads of the Pacific Company's steamers averaging 150 tons per trip during the 1917 season. The southbound cargoes on the vessels of the Alaska Company also are negligible. Furthermore, it is necessary to lighter all cargo at Nome and St. Michael, which practice is hazardous, slow, and expensive. In 1917, the Pacific Company operated three vessels on this route at a total operating deficit of \$51,902.81.

It was not seriously contended at the hearings that the increased rates were unreasonable. The assertion was made by certain shippers that these carriers were paying exorbitant dividends and that the increased rates would only serve to augment their profits. No evidence of probative force, however, was offered to substantiate this assertion. On the other hand, it affirmatively appears of record that, with the exception of an extra stock dividend paid in 1916 as the result of proceeds realized from the chartering of several vessels to companies engaged in South American and Oriental trades and a profitable sale of

certain property, the dividends paid by the Alaska Company have averaged 7.7 per cent per annum. The Pacific Company, which has been operating only since November, 1916, had not paid any dividends up to the time of the investigation.

There was a significant absence of protests or complaints from important commercial interests and localities directly affected by the increased rates. Many of the interests represented at the hearings admitted the carriers' need of additional revenue, and expressed their willingness to pay such increased rates as might be found to be reasonable. Representatives of substantial commercial interests in southeastern Alaska stated that while they did not invite increases in rates, yet if the carriers showed insufficient earnings under the old rates they would acquiesce in increased rates. The opinion was expressed that, in comparison with what they could make in other trades, the carriers were not earning very much on their Alaskan business. A representative of the Alaska Labor Union at Juneau withdrew the protest of that organization against the rates. Witnesses at Cordova testified that they had no complaint to make either against the rates or against the general conditions of transportation. Witnesses at Anchorage stated that they had paid so much greater increases in freight rates in other directions than they paid on the Alaskan lines that the advances applied by the respondent carriers seemed very moderate; that, in fact, much greater increases had been expected. Representatives of fishing interests admitted the necessity for increased earnings on the part of the carriers due to increased costs of operation.

It was suggested that the decreasing earnings of these carriers were in large measure due to the fact that Canadian lines were handling all-water traffic between ports in the State of Washington and Alaska which rightly belonged to the American lines. The amount of business, if any, so diverted by Canadian steamship lines does not appear of record, for which reason the effect of the operations of such lines on the earnings of the American carriers can not be determined. Some witnesses testified that under the increased freight rates they will probably not realize net profits as large as those formerly enjoyed. While this character of testimony is admittedly of value, the effect upon the shippers' business is not conclusive as to the reasonableness of the transportation rates.

Upon consideration of the whole record and according due weight to the various factors and elements involved in a general investigation of this character, it can not be said that the rate schedules as a whole are unreasonable.

LABOR SITUATION

Representations were made to the board that owing to excessive freight rates Alaska was being rapidly depopulated. The testimony
I. U. S. S. B.

shows that the laboring element in Alaska is of a roving, venturesome spirit; that generally when laborers come to the Territory they have little intention of remaining permanently, their average residence in Alaska ranging from two to four years. It was testified that wages in Alaska have not kept pace with those paid in the United States; that alluring reports of high wages paid in shipyards and other industries in the States have induced many men to leave Alaska for more remunerative employment in the States. It was further testified that weather conditions had a great deal to do with the exodus of laborers; that all things being equal, men preferred the milder climate of the States, and that, in the absence of advantage of higher wages in Alaska, they would migrate to the States. Various employers admitted that the freight rates had very little, if anything, to do with the situation, and stated that they could not hope to hold their men in the face of the conditions described. Other witnesses expressed the opinion that the exodus of men from Alaska was due not only to the lure of higher wages in the States, but to heavy enlistments in the Army and Navy, hundreds of men having left the Territory to enlist in the military service. It appears, therefore, that the exodus of men from Alaska is attributable to causes over which the respondent carriers have no control.

SPECIFIC COMPLAINTS

Manifestly neither the carriers nor the shippers attempted to deal with all the specific rates between particular ports on the three Alaskan routes. In a general investigation of this character testimony relating to specific rates and localities would have been of little assistance to the board in arriving at a proper conclusion as to the reasonableness of the rate schedules as a whole. However, considerable testimony was introduced in respect to certain practices and rates of the carriers which will be presently considered. In other instances specific rates of the carriers were assailed, but the evidence introduced by complainants to support their allegations of unreasonableness consisted principally of general statements affording no adequate basis or a decision or conclusion in the premises.

With respect to the method of constructing rates on copper ore, it was contended that ore valued at \$10 per ton or less should not rightfully pay as high a rate as ore valued at \$50 per ton. Representatives of operators in the Ellamar district, mining low-grade ore said to approximate one-third of the ore shipments from Alaska, suggested a graduated scale of charges according to the values of the ore, beginning with ore valued at \$10 per ton or less and increasing the freight charges for every \$5 in values or fraction thereof. Mine operators in Latouche, Skagway, and other districts where the remaining two-thirds of Alaskan copper ore is mined, did not express an opinion on this sub-

ject. We are not, therefore, prepared to say that the application of the specific scale proposed by Ellamar operators would be practicable and equitable to operators in the other districts. This suggested method of constructing copper rates, however, is recommended to the carriers for their earnest and early consideration.

The specific complaints which we shall now proceed to consider seriatim are briefly as follows:

1. That the practice of applying rates on weight-or-measurement basis at ship's option is unjust and unreasonable.
2. That the rule under which steamers will not move to a private dock for less than 25 tons of freight is unjust and unreasonable.
3. That the differentials between rates from Anchorage and Seattle to Juneau, Alaska, are unduly preferential of Seattle and unduly prejudicial to Anchorage.

(1) The carriers' practice of assessing freight charges on the weight-or-measurement basis at ship's option was attacked by various shippers who urged that such practice be abandoned in favor of an exclusive weight basis. Representatives of the carriers claimed that a strictly weight basis was not practicable on the Alaskan routes. They stated that an elaborate and complex classification was an indispensable prerequisite to its adoption, and that the cost of handling freight would be substantially greater than under the present system. Furthermore, it was asserted that in order to maintain the present level of earnings the rates on heavy articles must be increased and the rates on light and bulky articles reduced, thereby disarranging the whole rate fabric. To illustrate, the rates on denims and bolts of calico, which are heavy but of comparatively low value, would be increased, while the rates on eiderdown quilts and quilted dressing gowns, which are light but of high value, would be reduced. A vessel has only so much space where freight can be placed, regardless of its weight. In some cases the weight and measurement, from a revenue standpoint, will be the same; in other cases the measurement will exceed the weight several times. It was maintained that under the weight basis shippers would have little incentive to compress their shipments, in consequence of which they would occupy more space than otherwise would be required. The advantage would be with the careless shipper, and the disadvantage would be with the shipper who really seeks to conserve space. At the same time the freight capacity of the vessels would not be efficiently utilized. The carriers contended, and there is considerable force in the contention, that the ultimate effect of the weight basis would be to raise the rates on necessities and to lower the rates on luxuries.

It was argued by the shippers that no two men will measure the same thing alike, and instances of variations in charges assessed on

identical shipments were cited. They claimed that it costs less money to weigh goods than it does to measure them, adding that the solution of the weight problem on the California routes and on railroads demonstrates that it is practicable on the Alaskan routes. On behalf of the carriers it was testified that the weight basis was used by the Pacific Company between Seattle and California, not because it was considered more scientific, but because the company was subjected to active competition by rail lines using the weight basis, and it had finally adopted that basis for purely competitive reasons. No parallel conditions exist in the Alaskan trade.

The record does not justify a conclusion or decision that the practice of assessing freight charges on the weight-or-measurement basis is unjust or unreasonable, or that the application of an exclusive weight basis, even if practicable on the Alaskan routes, would be more equitable or satisfactory to shippers generally.

(2) The carriers have in effect a tariff rule that no vessel will move to a private dock for an offering of freight under 25 tons. A minimum of 10 tons, with no increase in freight charges, was suggested by certain interests handling fresh fish. Occasionally a fishing vessel comes into port with less than 25 tons of fish. If it delivers the cargo at a private dock and the carrier declines to go there for less than 25 tons, the fish must lie on the dock until 25 tons have accumulated or be transported by the shipper to the steamship company's dock. It was pointed out that the tariffs provide a minimum of only 15 tons on salt fish southbound, with higher rates on shipments below 15 tons. Manifestly it costs more to handle several small shipments, issue separate shipping receipts, make separate waybills and expense bills, and separate entries in accounts than it costs to handle one large shipment of the same commodity shipped by one consignor to one consignee. The conditions surrounding the operations of salteries and the fresh-fish business were shown to be substantially dissimilar. Thus a minimum adapted to one industry would not necessarily be appropriate for the other. It appears of record, moreover, that the fishing industry generally adheres to the practice of shipping in 25-ton and even larger lots, and that there is no real demand from other industries for a reduction of the present minimum. The beneficiaries of a reduced minimum would be a comparatively few shippers who would thereby be relieved of the trouble and expense of transporting fish from private docks to those of the carriers.

The record does not disclose any justification for requiring the carriers to reduce the minimum amount of tonnage for which a ship will move to a private dock below the present minimum of 25 tons. Furthermore, it appears that if the minimum were reduced the ships would be seriously delayed by calling at various landing places for

small shipments, necessitating more circuitous routes of travel and resulting in decreased efficiency of operation. We think the interest of the public will be better conserved if such minimum be not disturbed at this time.

(3) Representatives of farming and coal interests at Anchorage contended that the maintenance of higher rates from Anchorage to Juneau territory than from Puget Sound ports to such territory subjected Anchorage to undue discrimination and prevented it from marketing its products in Juneau. The contention was limited to two classes of commodities, namely, farm products and coal, which were alleged to be competitive with like commodities shipped from Puget Sound ports to Juneau. The record shows that there is a considerable movement of blacksmith coal from Anchorage to Juneau, but that there is not likely to be a movement of bulk coal between said ports for some time to come. Further consideration of this question with regard to bulk coal is not deemed necessary. It is pertinent to say in passing, however, that when shipments of this commodity are offered to the carriers for transportation to the Juneau territory they will be expected to apply just and reasonable rates thereto.

It was testified that the production of vegetables at and near Anchorage has steadily increased for several years past until it has now reached substantial proportions. Some of these commodities are being shipped to Juneau, which was shown to be the logical market therefor, in competition with like commodities reaching that point from Puget Sound ports. The evidence adduced by the shippers amply supports their allegation that the shipment to Juneau of much larger quantities of these commodities is precluded by the present differential in rates which permits Puget Sound merchants to lay down their goods in Juneau more cheaply than Anchorage merchants.

The distance from Anchorage to Juneau is 1,051 miles and from Seattle to Juneau is 880 miles, but the rates from Anchorage to Juneau are between 40 and 50 per cent higher than from Seattle to Juneau. On routes of this great distance a difference of 171 miles of itself is not regarded as sufficient justification for this disparity in rates. The carriers have failed to show any circumstances which would warrant the maintenance of such differentials. On the contrary, representatives of the carriers admitted that Puget Sound ports and Anchorage should be placed on an equalized basis so far as the rates on blacksmith coal and farm products to Juneau are concerned. We therefore conclude and decide that with relation to the transportation to Juneau of farm products and blacksmith coal, Puget Sound ports and Anchorage are substantially similarly situated and that the maintenance of rates on these commodities from Puget Sound ports to Juneau lower than rates from Anchorage to Juneau is unduly preferential to Puget Sound ports and unduly prejudicial to Anchorage.

THE CANNERY TRADE

Considerable testimony was introduced in respect to the cannery trade, particular emphasis having been placed upon the fact that the carriers have in effect special contracts and rates governing the transportation of cannery products. The record shows that approximately 50 percent of the southeastern Alaskan business handled by the carriers is cannery business. Many of the canneries are located at out-of-the-way points, and steamers frequently make a detour of more than 20 miles waste. In view of these facts of record, we do not deem it necessary or expedient at this time to order the cancellation of existing cannery contracts or the alteration of the present method of serving canneries.

CONCLUSIONS SUMMARIZED

Upon consideration of all the evidence of record the Board concludes and decides as follows:

1. The rates, regulations, and practices of the respondent carriers have not been shown to be unreasonable.

2. The practice of assessing freight charges on the weight-or-measurement basis at ship's option has not been shown to be unreasonable; nor has the substitution of an exclusive weight basis in lieu thereof been justified.

3. The maintenance of rates on blacksmith coal and farm products from Puget Sound ports to Juneau, Alaska, lower than rates contemporaneously maintained on like traffic from Anchorage to Juneau, is unduly preferential to Puget Sound ports and unduly prejudicial to Anchorage; and the resulting undue discrimination must be removed.

4. The rule under which vessels of the carriers will not move to a private dock for less than 25 tons of freight has not been shown to be unreasonable; and the reduction of such minimum below 25 tons is not deemed warranted by the record.

5. The present method of handling cannery traffic, and the rates applicable thereto, have not been shown to work any undue discrimination necessitating a cancellation of existing cannery contracts between shippers and carriers.

No order will be entered at this time. The carriers, however, will be required to establish, on or before December 31, 1919, rates for the transportation of blacksmith coal and farm products from Anchorage to Juneau, Alaska, which shall not exceed the rates contemporaneously maintained and applied for like traffic from Puget Sound ports to Juneau. If this requirement is not met on or before the date specified an appropriate order will be entered.

EX PARTE 2

IN THE MATTER OF THE APPLICATIONS OF WATER CARRIERS OPERATING ON THE ATLANTIC COAST, GULF OF MEXICO, AND GREAT LAKES FOR AUTHORITY TO INCREASE RATES

Submitted August 20, 1920. Decided August 24, 1920

Certain advances in rates, fares, and charges authorized

George P. Wilson for Philadelphia Chamber of Commerce; *William J. Pitt* for Paint Manufacturers Association of the United States, National Varnish Manufacturers Association, and the Philadelphia Paint, Oil & Varnish Club; *George Koehler* for Importers First Aid Service; *William Allen* for New Orleans Association of Commerce; *Walton C. Wright* for Associated Industries of Massachusetts; *Frank E. Williamson* for Buffalo Chamber of Commerce; *C. F. MacDonald* for Duluth Board of Trade; and *F. R. Levins* and *F. S. Keiser* for Commercial Club of Duluth, Minn.-

A. D. Stebbins, *T. W. Kennedy*, and *J. B. Sweeny* for Merchants & Miners Transportation Company; *J. T. Green* for Clyde Steamship Company, Mallory Steamship Company, and Gulf & Southern Steamship Company; *F. H. Mickens* for Eastern Steamship Lines Inc.; *A. J. Townsend* for Baltimore Steamship Company; *George A. Parker* for Starin New Haven Line; *A. E. Paterson* for Panama Railroad Steamship Company; *A. J. Outerbridge* for Quebec Steamship Company; *Edwin H. Duff* for Colonial Navigation Company and Pere Marquette Line Steamers; *Charles A. Donlin* for Michigan Transit Company; *Fred A. Pixley* for Chicago, Racine & Milwaukee Line and for Wisconsin Transit Company; *L. J. Lewis* and *John B. Annis* for Detroit & Cleveland Navigation Company; *F. A. Stanley* and *W. R. Evans* for Great Lakes Transit Corporation; *H. R. Rogers* and *A. T. Zillmer* for Cleveland & Buffalo Transit Company; *Ewing H. Scott* and *Francis B. James* for Milwaukee, Chicago & Michigan City Line; and *Charles B. Hopper* for Goodrich Transit Company

REPORT OF THE BOARD

This proceeding was instituted by the board of its own motion, to determine the justness and reasonableness of certain proposed advances in the rates, fares, and charges of water lines engaged in interstate commerce, on the Atlantic coast, Gulf of Mexico, and Great

Lakes. The tariffs and applications naming the rates, fares, and charges in question were filed with the board on and subsequent to August 11, 1920, and were proposed to be made effective on August 26, 1920, contemporaneously with the effective application of the rates, fares, and charges approved by the Interstate Commerce Commission, as to rail-and-water traffic, in its Ex Parte Docket No. 74 (58 I. C. C. 220).

Section 18 of the Shipping Act of September 7, 1916, imposed upon common carriers by water in interstate commerce subject to the jurisdiction of the board, an obligation to give to the public and the board 10 days' notice of proposed advances. By the terms of the act such advances can not become effective until their approval by the board.

Prior to the expiration of the statutory period, following the receipt by the board of the tariffs and applications here under consideration, protests against the operation of the same were lodged with the board by shippers and commercial organizations. The board thereupon directed that the tariffs then on file, together with those which thereafter might be filed, be suspended, and that all applications for permission to advance rates be consolidated. An order was so entered on August 12, 1920, instituting a general investigation in the premises, and the matter was set down for hearing on August 18, 1920.

Commercial organizations, shippers, and the public were duly notified by telegraph, by mail, and through the press of the time and place of the hearing, and all interested parties were given an opportunity to be fully heard. Notwithstanding the protests which had been filed with the board in advance of the hearing, however, it developed at the hearing that there was no concerted opposition to a general increase in rates. Representatives of shippers stated frankly that they did not object to reasonable advances in rates, as they realized that the carriers had been and were confronted with increases in the cost of operation, including labor, materials, and other items; and they recognized the fact that in many, if not in most, instances some increases should be made in the rates, in order that the revenues of the carriers might be fairly remunerative. Most of the testimony on behalf of shippers was directed toward specific situations, which they conceived to be discriminatory or detrimental to their respective interests. It will be recognized, of course, that howsoever important these matters may be to individual shippers, such evidence is not illuminative in determining whether or not the proposed advances in rates as a whole are reasonable and will yield a fair return, or more than a fair return, upon the value of the property of the carriers devoted to the public service.

ATLANTIC COAST AND GULF LINES

The general advances proposed by the lines operating between Atlantic coast and Gulf ports were as follows:

	Freight	Passenger
	<i>Per cent</i>	<i>Per cent</i>
Between ports on the Atlantic coast north of Norfolk, Va.....	40	20
Between Norfolk and New Orleans, La.....	25	20
Between New Orleans and the Mexican border.....	35	20

These applicants seek to justify the proposed advances on the ground that the present rates are not sufficiently remunerative, in view of the prevailing high operating cost, and that the rates should be advanced to enable them to earn a reasonable return upon the value of their property devoted to the public service.

Inasmuch as the board is not empowered to prescribe accounting rules and systems to be observed by the carriers subject to its jurisdiction, the financial and statistical data submitted in support of the proposed advances were in varied and dissimilar form, not susceptible of reduction to a common basis. It has, therefore, been necessary to consider such data by individual carriers rather than *en bloc*. The operating results reflected by these varied statistics are substantially identical, however, and may be illustrated by the following summaries:

An examination of the exhibits and testimony submitted by the Merchants & Miners Transportation Company shows that on June 30, 1920, the book value of its property devoted to the public service, including floating equipment, wharves, and other necessary terminal property, was \$3,842,419.56; that for the six months ended June 30, 1920, its total operating revenues were \$3,021,971.31, and that its total operating expenses during the same period were \$3,574,972.46, leaving an operating deficit for the six months noted of \$553,001.15. After making allowances for miscellaneous income and expenses, this deficit was increased to \$694,196.25. Figures submitted by this carrier showed an insured valuation of the above-described property of more than \$6,000,000, which it was stated represents only 80 per cent of its actual value.

The advances proposed by the Merchants & Miners Transportation Company, in addition to those allowed that carrier by the Interstate Commerce Commission, assuming that the volume of traffic to be handled by it does not diminish, were estimated to yield, for six months, increased revenues of \$1,019,051.95, practically all of which it was anticipated will be absorbed by operating expenses. It was asserted that the revenue requirements of the Merchants & Miners

Transportation Company, as a matter of fact, necessitate a larger increase than that petitioned for, but that any greater increase would seriously disturb existing rate relationships and thereby retard the movement of traffic.

The six months covered by the above statistics were represented as comprehending a period when the company was operating at maximum capacity; and it was stated that the volume of traffic handled at any other period would not be nearly so heavy. It was testified that the costs of operation resulting from increases in the cost of materials, fuel, supplies, labor, and every other element of transportation, were abnormally heavy, and that there was no present indication that they would decline to any great extent in the very near future.

Conditions governing the operations of other Atlantic coast and Gulf lines are substantially similar to those above set forth, except that at some ports not served by the Merchants & Miners Transportation Company conditions are even more unfavorable. The record shows that for the period ended June 30, 1920, the Eastern Steamship Lines, Incorporated, sustained a loss of \$539,831.07, and that for the year ended December 31, 1919, the operating deficit of the Clyde Steamship Company was \$1,357,953 and of the Mallory Steamship Company \$643,165.

Applications and data submitted by certain carriers in respect of water-line operations between New York, on the one hand, and the Canal Zone, the Virgin Islands, and Porto Rico, on the other hand, reflect the operating conditions shown above, including unprecedented costs and inadequate returns with resultant losses.

GREAT LAKES LINES

The advances proposed by the Great Lakes carriers approximate 40 per cent on freight and 20 per cent on passenger traffic. It appears from the record that the expenses incident to the operation of vessels on the Great Lakes have increased substantially to the same extent as on the Atlantic coast. For example, it was shown that these carriers are now paying for bunker coal approximately 100 per cent more than they paid in 1919, and they claim to be receiving a poorer quality than was then available. These carriers also claim that they are paying 60 per cent more for materials and supplies and 40 per cent more for labor than they paid in 1919.

A situation existing on the Great Lakes which does not confront the carriers operating on the Atlantic and Gulf coasts is that the Great Lakes operations are seasonal, and during several months of the year some of the carriers are obliged to discontinue operations on account of weather conditions. During this nonoperating period the overhead and fixed charges of the carriers remain fairly constant.

Some stress was laid by shippers upon the fact that the past performances of a few of the Great Lakes lines had shown substantial returns on their property. It must be borne in mind, however, that we are dealing with present conditions; and, whatever those statistics may show for past years, they can not be said to reflect the results of operations under the high costs and other unfavorable conditions existing at the present time.

The book value of the terminal facilities and fleet operated by the Great Lakes Transit Corporation is \$4,087,887, according to the record. For the six months ended June 30, 1920, the gross revenue of this company was \$1,077,295; its operating expenses were \$1,194,411.38, making a deficit of \$117,116.38. It was claimed that the market value of the company's property is \$10,000,000. The Cleveland & Buffalo Transit Company showed a net loss to June 30, 1920, of \$193,115.89. The Goodrich Transit Company sustained a net loss of \$77,905.83 for the year ended June 30, 1920. These figures fairly represent the results attained by other Great Lakes carriers in the operation of their respective lines.

There is ample evidence of record to support the claims of the Atlantic, Gulf, Great Lakes, and Territorial Lines, regarding the increased costs of their operations, and their need for additional revenue; and the increases for which they have respectively applied will produce not more, and in all probability less, than a reasonable return upon the value of their properties devoted to the public service.

RELATION OF PORT-TO-PORT AND PROPORTIONAL RATES

We are urged to allow the proposed advances to become effective on August 26, 1920, contemporaneously with the increased rates authorized by the Interstate Commerce Commission in its Ex Parte Docket No. 74 (58 I. C. C. 220); this, it is claimed, being necessary to preserve proper rate relationships.

If the instant increases should be denied, the carriers would, of course, be confronted with the unnatural and objectionable situation of having port-to-port rates which would be lower than their proportional water rates between the same ports on traffic handled in connection with rail lines. It was also indicated that such a state of affairs would permit shippers so to handle their freight as to avail themselves of the preferential port-to-port rates, instead of paying the higher proportional rates, thereby tending to deplete the revenues which should properly accrue to the carriers from through rail-and-water business. As against this situation it is shown that the cost of handling port-to-port traffic is generally in excess of the cost of handling through traffic.

COLLATERAL COMPLAINTS OF SHIPPERS

Some evidence was introduced by shippers tending to show that the lines in certain instances have not given to commercial organizations and to shippers sufficient notice of proposed embargoes, and that the carriers' equipment has been inadequate to handle the traffic offered. It is, of course, desirable that close cooperation be maintained between the carriers and the shippers, with a view, at all times, to acquainting the latter with the fact of proposed embargoes, as in this way only is it possible to prevent unnecessary movement of freight to wharves and terminals. It is also important that the carriers shall exert every effort to provide a transportation service that will fully meet the needs of the shipping public. In this connection, representatives of several of the carriers expressed themselves as willing to improve their facilities, if it should hereafter develop that their financial condition will so warrant.

CONCLUSIONS AND DECISION

After careful consideration of the applications and supporting statements, and all the facts and evidence of record in the instant case, the board concludes and decides that, to the extent hereinafter indicated, the advances proposed to be made have been shown to be just, reasonable, and necessary. The rates, fares, and charges of the water carriers operating in the sections involved may be increased as follows:

	Freight	Passenger
	<i>Per cent</i>	<i>Per cent</i>
Between Norfolk, Va., and ports on the Atlantic coast north thereof.....	40	20
Between Norfolk and New Orleans, La.	25	20
Between New Orleans and the Mexican border.....	35	20
Between ports on the Great Lakes.....	40	20
Between New York and the Canal Zone.....	10	33½
Between New York and the Virgin Islands.....	(1)	33½
Between New York and Porto Rico.....	20	20

¹ No freight rates involved.

The increases authorized on freight traffic may be made applicable to weighing, lighterage, storage, floating, transfer, diversion, re-shipment, switching, and transit services; and the passenger fare increases authorized may be applied also to excess baggage.

On the Atlantic and Gulf coasts the through rates between ports located in different coastal sections, which are made on a combination basis, should be increased by applying to each factor of the through rates its respective percentage.

Local or joint through rates between ports in one coastal section and ports in any other coastal section should be increased 33½ per cent.

For rate-making purposes, Norfolk, Va., will be considered in the Norfolk-North-Atlantic section to and from ports in said section, and in the Norfolk-New Orleans section to and from ports in the latter section; New Orleans, La., will be considered in the Norfolk-New Orleans section to and from ports in said section and in the New Orleans-Mexican border section to and from ports in the latter section.

With regard to increases in terminal charges Norfolk will be considered in the Norfolk-North-Atlantic section, and New Orleans will be considered in the New Orleans-Mexican border section.

The increases in rates, fares, and charges herein authorized may be made effective not later than January 1, 1921, on one day's notice to the public and the board.

An order will be entered accordingly.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD,
held at its office in Washington, D. C., on August 24, 1920

Ex Parte 2

In the Matter of the Applications of Water Carriers Operating on the Atlantic Coast, Gulf of Mexico, and Great Lakes for Authority to Increase Rates

It appearing That by its report entered in the above-entitled proceeding, which report is hereby made a part hereof, the United States Shipping Board has authorized certain increases in the port-to-port rates, fares, and charges of certain interstate water carriers subject to its jurisdiction:

It is ordered; That all tariffs and supplements effecting the increases authorized in the aforesaid report shall bear on their title page the following notation:

Rates published herein under authority of order of United States Shipping Board entered in Ex Parte Docket 2, August 24, 1920.

And it is further ordered, That a copy of this order be served upon each common carrier by water so authorized to increase its rates, fares, and charges.

By the board.

[SEAL.]

JOHN J. FLAHERTY,
Secretary.

INVESTIGATION AND SUSPENSION DOCKET No. 1
WOOL RATES FROM BOSTON TO PHILADELPHIA

Submitted February 2, 1921. Decided February 17, 1921

Proposed advances on wool and related articles from Boston to Philadelphia found not justified. The suspended tariff ordered canceled

REPORT OF THE BOARD

By schedule filed to become effective October 15, 1920, the Merchants and Miners Transportation Company proposed to increase rates on wool and related articles from Boston, Mass., to Philadelphia, Pa., by canceling existing commodity rates and applying class rates in lieu thereof. Upon protest the carrier was directed to suspend the application of its tariff, and the Board instituted this proceeding and investigation into the reasonableness of the proposed increases. Below is a table showing the present rates on the commodities involved, the proposed rates, percentages of increases which the proposed rates would effect over the present rates and over the rates applicable immediately prior to the 40 per cent advance authorized by the Board under Ex Parte 2 and made effective by the carrier.

Commodity	Present rate (cents per 100 pounds)	Proposed rate (cents per 100 pounds)	Percentage increase proposed	Percentage increase over rates effective immediately prior to Ex Parte 2
Wool, scoured:				
Carload.....	55.5	66.5	19.8	68.3
Less than carload.....	74	92.5	25	74.5
Wool, in grease:				
Carload.....	51	55.5	8.8	52.1
Less than carload.....	66.5	74	11.2	55.8
Wool noils, carload.....	55.5	66.5	19.8	68.3
Wool tops, less than carload.....	74	92.5	25	74.5
Wool waste, carload.....	55.5	66.5	19.8	68.3
Mohair, scoured:				
Carload.....	51	92.5	81.3	153.4
Less than carload.....	66.5	92.5	39	94.7
Mohair, in grease:				
Carload.....	51	74	45	102.7
Less than carload.....	66.5	74	11.2	55.7
Mohair noils:				
Carload.....	51	92.5	81.3	153.4
Less than carload.....	66.5	92.5	39	94.7
Mohair tops:				
Carload.....	66.5	92.5	39	94.7
Less than carload.....	74	92.5	25	74.5
Mohair waste:				
Carload.....	51	92.5	81.3	153.4
Less than carload.....	66.5	92.5	39	94.7

The carrier seeks to justify the proposed advances on the grounds that it is sustaining a deficit on its operations as a whole, that the revenue derived from the transportation of wool and mohair from

Boston to Philadelphia under existing rates is not sufficiently remunerative, and that the present rates on these commodities are below the level of the rail rates applicable from and to the same points.

While the evidence submitted by the transportation company to the effect that its common carrier operations as a whole were unprofitable is admittedly of value, obviously this is not a controlling determinant of the reasonableness of the particular rates in question. Indeed, rates on particular commodities may be unreasonably high and yet the carrier fail to realize a fair return from its entire operations. The carrier contended that the water rates should be on a level with the rail rates and offered some evidence on this point. In this connection we believe it sufficient to state that there is such a manifest difference between transportation via rail and via water that rail rates cannot be regarded as a proper criterion or measure of water rates. However, the evidence adduced on these points has been accorded every consideration to which it is entitled in a proceeding of this nature.

Some evidence was introduced regarding the revenues on wool and other commodities, such as shoes, and cotton piece goods, which indicated that the revenue per cubic foot on wool was 4.7 cents on carload and 6 cents on less-than-carload shipments, as against 7 cents per cubic foot for shoes and 11.3 cents per cubic foot for cotton piece goods on any-quantity shipments. The probative force of this evidence is considerably impaired because of the dissimilarity of these commodities from a transportation standpoint. The difference in the average value of the commodities upon which the comparison is based is wide. Shoes were claimed by a witness who testified on behalf of protesting shippers to have a value ranging from \$5 to \$25 a pair. We can not but feel that the valuation figures are too high and should be liberally discounted—\$3 to \$10 value per pair is certainly conservative, which figures will be used. These shoes pack 24 pairs to a case and the weight of the shipment averages 70 pounds per wooden case and 60 pounds per fiber case. The value of a case of shoes, therefore, ranges from \$72 to \$240, or approximately from \$103 to \$400 per 100 pounds. The any-quantity rate on this product of manufacture, as published and charged by the Merchants and Miners Transportation Company, is 42 cents a case, or approximately 65 cents per 100 pounds, while the proposed carload and less-than-carload rates on wool in grease are 55½ cents and 74 cents per 100 pounds, respectively. The any-quantity rate on cotton piece goods, Boston to Philadelphia, is 48½ cents per 100 pounds in bales or cases. This commodity includes white sheeting averaging 50 yards to the 100 pounds, the value of which is as high as \$1 a yard; gingham and printed goods, valued from 40 cents to 80 cents per yard, and cotton

duck, as high as \$1.20 per yard. Wool in grease, which was admitted to constitute by far the greater proportion of the southbound movement of the commodities on which increased rates are sought, was shown by the record to have a value of \$25 per 100 pounds.

Wool is a raw unmanufactured farm product, transported in uniform bags or bales weighing from 350 to 1,000 pounds when in grease, and 100 to 350 pounds when in a scoured state. The various grades and several forms of wool and mohair, according to the record in this case, are substantially similar in character and their respective values vary but slightly. Shoes and cotton piece goods are considerably more valuable per pound than wool and are subject to far greater risk in transportation, particularly as to theft and damage in transit.

Much of the evidence of the Merchants and Miners Transportation Company was directed toward maintaining that wool and mohair are commodities of exceptional bulk, and that the principal kinds of wool moved by it from Boston to Philadelphia are wool in grease and scoured wool which do not load to the same density as other merchandise traffic. By deductions from the record at various stages of the proceeding, it is shown that approximately the following cubic measurement of space is displaced by 100 pounds of each of the commodities named:

	Cubic feet
Wool in grease (in bags)	14. 00
Wool in grease (in bale)	7. 77
Mohair in grease (bale and sack)	11. 11
Wool, scoured (in bag)	21. 00
Wool, scoured (in bale)	13. 33
Wool noils (in bag)	17. 50
Wool tops (bag or bale)	15. 63
Shoes (case)	7. 14
Cotton piece goods (bale or case)	4. 27

It will be seen that the average displacement per cubic foot of the commodities shown above on which the Merchants and Miners Transportation Company seeks to justify increases in rates is 14.33 pounds, as against an average of 5.70 pounds per cubic foot for the two commodities used by the carrier in making its comparison. Again, the displacement of 100 pounds of wool in grease and scoured, both in bag and bale, which the carrier states comprises the largest tonnage of the commodities upon which increased rates are sought, averages 14.02 cubic feet. However, the fallacy of basing rates solely upon relative bulk and weight when the commodities are greatly dissimilar in other important respects is apparent. Evidence in justification of increases in rates ranging from 8 to 81 per cent upon the ground of the relatively greater displacement of space by wool and mohair than by articles which are products of a high degree of

manufacture, of much higher value and which require far greater care in handling, is not convincing.

Exhibits and testimony of record are conclusive of the large volume and regularity of movement of wool from Boston to Philadelphia by the Merchants and Miners Transportation Company. Wool grown in all parts of the world is brought to Boston, which, due to its claimed favorable banking arrangements, has become the first wool market in the United States. Because of advantageous scouring facilities at Camden, N. J., wool in grease is shipped from Boston to Philadelphia, and from the Merchants and Miners Transportation Company's docks in the latter city it is teamed to Camden. In addition there is a large tonnage of wool carried by this transportation company from Boston to Philadelphia which is consigned to mills situated in and about Philadelphia.

This large and regular movement of wool by the carrier from Boston to Philadelphia is of importance in a consideration of the reasonableness of the rates proposed over those now in effect. A large volume of port-to-port traffic consisting of a commodity which is uniform in package, adaptable and convenient for stowage, desirable from a labor standpoint, low in value and entailing minor risk, undoubtedly requires the most substantial reasons to justify the higher rates projected by the suspended tariff. The record indicates that the volume of shoes and cotton piece goods carried by the Merchants and Miners Transportation Company from Boston to Philadelphia is not at all comparable with that of the commodities upon which advances in rates are proposed.

Evidence was offered on behalf of the carrier to the effect that if the contemplated advances were not applied the offerings of wool and mohair shipments would be increased, as a result of which it might be necessary during more normal times than now prevail to place an embargo on general merchandise to meet the situation. It was added, however, that at the present time practically all of the transportation company's vessels are leaving Boston for Philadelphia with very light cargoes and that shipments of any character are desirable. It was testified that a depression now exists in the wool trade, but that if the present rates be not disturbed the great bulk of wool will move from Boston to Philadelphia via vessels of the Merchants and Miners Transportation Company; and that increases in the rates will result in the diversion of traffic from this carrier.

After careful consideration of all the facts and evidence of record the Board concludes and decides that the proposed advances have not been shown to be reasonable and have not been justified by the carrier. An order directing the cancellation of the suspended tariff will be entered.

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on February 17, 1921

Investigation and Suspension Docket No. 1

Wool Rates from Boston to Philadelphia

It appearing, That by order dated October 12, 1920, the Board entered upon a hearing concerning the propriety of the increases and the lawfulness of the rates proposed by the Merchants and Miners Transportation Company in a certain schedule enumerated and described in said order, and directed that the operation of said schedule be suspended pending such hearing and decision; and

It further appearing, That a full hearing and investigation has been had in the premises; and the Board on the date hereof having made and filed a report containing its conclusion and decision, which said report is hereby referred to and made a part hereof; now, therefore,

It is ordered, That said Merchants and Miners Transportation Company is hereby notified and required to cancel said schedule on or before March 1, 1921, and that this proceeding be discontinued.

By the Board.

[SEAL.]

(Signed) JOHN J. FLAHERTY,

Secretary.

UNITED STATES SHIPPING BOARD.

DOCKETS Nos. 8 AND 10.

BOSTON WOOL TRADE ASSOCIATION

v.

MERCHANTS AND MINERS TRANSPORTATION
COMPANY.

Submitted October 27, 1921. Decided December 2, 1921.

Rates on wool and mohair in grease, scoured, noils, tops and waste, between Boston and Philadelphia, found unreasonable but not unduly prejudicial. Reparation denied. Reasonable rates for the future prescribed.

Respondent's practice of limiting its port-to-port rates from pier to pier and not including within the application of said rates all receiving and delivering points within the switching, free lightage limits, and water-front locations of Boston and Philadelphia not found unreasonable or unduly prejudicial.

H. A. Davis for the complainant.

Otis B. Kent for the respondent.

REPORT OF THE BOARD.

In this proceeding a tentative report was prepared by the examiner and submitted to the parties. This report is based thereon with such modifications as seemed necessary after consideration of the record and of the exceptions which were filed.

The two complaints herein present the same general subject matter, were consolidated for hearing, and will be disposed of in one report. The complainant is a voluntary association of individuals, partnerships, and corporations engaged in the purchase and sale of wool, mohair, and other commodities, with headquarters at Boston, Mass. By complaints seasonably filed it alleges violations of sections 16 and 18 of the Federal shipping act of 1916 by the Merchants and Miners Transportation Company in respect of shipments of wool and related articles transported since February 14, 1919, between Boston, Mass., and Philadelphia, Pa. The Board is requested to establish reasonable and nonprejudicial rates for the future and to award reparation.

THE ISSUE OF UNREASONABLENESS.

The gravamina of the complaints, in so far as they allege violations of section 18, are that the respondent carrier's commodity rates from

Boston to Philadelphia on wool and mohair in grease, scoured, noils, tops, and waste, which range from 51 to 66½ cents per 100 pounds carload and from 66½ to 74 cents per 100 pounds in less-than-carload lots, as well as its class rates on those commodities from Philadelphia to Boston, which range from 55½ to 66½ cents per 100 pounds carload and from 66½ to 92½ cents per 100 pounds less-than-carload, are unjust and unreasonable; and that the carload rates on all port-to-port traffic moving between Boston and Philadelphia are unjust and unreasonable. Rates on wool and related articles which are deemed by the complainant to be reasonable are set out in detail in the complaint in Docket No. 10, and were pressed at the hearing. These rates represent decreases of from 10.8 to 41.2 per cent from those assailed and are designed to include delivery to, from, and between all receiving and delivering points within the free lighterage limits and waterfront locations of Boston and Philadelphia. For the purposes of this proceeding, mohair is shown to be similar to wool and to call for like treatment.

The published tariff rates of the Merchants and Miners Transportation Company on wool and related articles between Boston and Philadelphia, as compared with the rates of that carrier on boots and shoes, cotton piece goods, and iron and steel articles between the same ports, are as follows:

Rates between Boston and Philadelphia.

[In cents per 100 pounds.]

Commodity.	Boston to Philadelphia.	Philadelphia to Boston.
Wool in grease:		
Carload	1 51	1 55½
Less carload	66½	66½
Wool, scoured:		
Carload	2 55½	2 66½
Less carload	74	74
Noils:		
Carload	2 55½	2 66½
Less carload	74	74
Tops:		
Carload	2 66½	1 66½
Less carload	74	74
Waste:		
Carload	2 55½	1 55½
Less carload	74	66½
Boots and shoes, any quantity	2 65	74
Cotton piece goods, any quantity	48½	48½
Iron and steel articles:		
Carload	28½	28½
Less carload	34½	34½

¹ Minimum carload weight, 16,000 pounds.

² Minimum carload weight, 10,000 pounds.

³ 42 cents per case.

NOTE.—Less-than-carload shipments of wool in grease, scoured wool, tops, and waste, Philadelphia to Boston, when uncompressed, are subject to higher rates than those shown above—i. e., 74, 92½, 92½, and 74 cents, respectively. Straight carload shipments of waste from Philadelphia to Boston, when uncompressed, are also subject to the second-class rate of 66½ cents, minimum carload weight 10,000 pounds.

Exhibits and testimony presented on behalf of the respondent set forth in detail the relative cubical space occupied by given units of

wool and boots and shoes and cotton piece goods, deductions from which in connection with statements of comparative revenue per cubic foot on traffic from Boston to Philadelphia are included in the following table:

Comparative spatial and revenue statement.

Commodity.	Cubic feet per ton (2,000 pounds).	Revenue per cubic foot (cents).
Wool, in grease, in bags, 150 pounds per bag.....	280	{3.6 carload. 4.7 less carload.
Wool, in grease, in bags, 200 pounds per bag.....	210	{5.0 carload. 6.3 less carload.
Wool, scoured, in bags, 100 pounds per bag.....	420	{2.6 carload. 3.5 less carload.
Wool, scoured, in bales.....	266	{4.2 carload. 5.5 less carload.
Boots and shoes.....	143	7.0 any quantity.
Cotton piece goods.....	85.6	11.3 any quantity.

As contended by the carrier during the hearing, the bulk of a commodity is one of the principal factors for consideration in constructing a rate for transportation by water, and great weight should be attached to this factor in a determination of the reasonableness or unreasonableness of such a rate. It is manifest, however, as urged by the complainant, that additional factors, such as value, revenue, and others, are to be considered which may negative the presumption of reasonableness arising from a calculation based upon the element of bulk alone. In this connection there is given below a table showing the values of wool in grease and scoured (which two classes comprise by far the greatest proportion of the wool traffic between Boston and Philadelphia), as compared with the values of shoes and cotton-piece goods, together with the revenue per ton and per ton-mile for each commodity computed upon the rates in controversy.

Comparative statement of values and revenues per ton and per ton-mile.

Commodity.	Value per ton of 2,000 pounds.	Revenue per ton.				Revenue per ton-mile.			
		Boston to Philadelphia.		Philadelphia to Boston.		Boston to Philadelphia.		Philadelphia to Boston.	
		Car-load.	Less than carload.						
Wool in grease, 14 cents per pound.....	\$280	\$10.20	\$13.30	\$11.10	\$13.30	\$0.021	\$0.028	\$0.023	\$0.028
Wool, scoured, 42 cents per pound.....	\$40	11.10	14.80	13.30	14.80	.023	.031	.028	.031
Shoes, \$6.50 per pair, \$240 per 100 pounds (any quantity).	4,860	13.00		14.80		.027		.031	
Gingham and print cloth, 40 cents per yard, 400 yards per 100 pounds (any quantity).....	3,200	9.70		9.70		.02		.02	

The foregoing table discloses wide differences in the values of wool and the commodities used in comparison, and inequalities with respect to the comparative revenues received for the transportation thereof. For example, the value of wool in grease is shown to be \$280 a ton, from which the respondent receives a per ton revenue of \$11.10, while boots and shoes valued at \$4,800 per ton produce a per ton revenue of \$13. The differences in values and the inequalities in revenues are further illustrated with respect to wool waste, a commodity the value of which it was testified during the hearing ranges from 1 to 4 cents per pound, or an average per ton value of \$50. The revenue per ton and the revenue per ton-mile derived by the carrier from the transportation of this commodity are greater than from the transportation of gingham and print cloth, white sheeting, and cotton duck, each of which represents a high degree of manufacture and is of far greater value.

On behalf of the complainant it is strongly contended that the volume of the movement of wool in its various forms, especially wool in grease, between Boston and Philadelphia warrants the reduction in rates which the Board is requested to effect. It should be here stated, however, that the volume of movement, or any other single factor, should not dominate other factors necessarily entering into a determination of what is a reasonable rate to be applied for the transportation of a particular commodity. According to the record, Boston and Philadelphia are, respectively, the first and second largest wool markets in the United States, and the movement of this commodity between the two cities exceeds the movement between any other two points in this country. From 50 to 70 per cent of all the wool used in the United States is consumed in New England and Pennsylvania. In many instances wool is sent from Boston to Philadelphia, a distance of 475 nautical miles, to be cleaned and sorted, after which it is shipped back to Boston and placed in warehouses for sale and use by consuming mills. It is stated that under normal conditions around 50,000,000 pounds of wool move between these cities each year and that the cargo of every vessel of the Merchants and Miners Transportation Company leaving Boston and Philadelphia contains a large percentage of this commodity. On eight sailings from Boston to Philadelphia during the weeks of March 6, 13, 20, 27, and April 3, 1920, the tonnage of wool transported by the respondent, as compared with the tonnage of boots and shoes, dry goods, and iron and steel articles, is shown by the record to be as follows:

Commodity (tons).	Week beginning—				
	Mar. 6.	Mar. 13.	Mar. 20.	Mar. 27.	Apr. 3.
Wool.....	319	251	245	250	172
Boots and shoes.....	29	40	89	38	28
Dry goods.....	21	17	45	57	39
Iron and steel articles.....	63	18	36	27	3

The general freight agent of the respondent carrier stated that during the period September 1 to December 31, 1920, wool in grease constituted approximately 13.41 per cent of the respondent's total tonnage from Boston to Philadelphia, required 21.9 per cent of the available cargo space, and produced 13.47 per cent of the gross revenue; and that shipments of wool in other forms made practically the same showing. During the years 1919 and 1920 the movement of wool from Philadelphia to Boston is stated to have been 9,284 and 4,955 tons, respectively. Some effort was made to show that a decrease in the tonnage of wool and related articles moved by the respondent between Boston and Philadelphia during 1920 as compared with 1919 was due to high rates, and the relation between such rates and the values of the commodities. It is apparent on the record, however, that while this condition may have been one of the influencing factors, it was not alone responsible for the lower volume handled. A growing depression in business and unfavorable commercial conditions generally were admitted to have had a pronounced effect on the movement of this traffic.

Evidence was introduced on behalf of the complainant indicating that charges for labor and materials were receding and that the cost of business operations generally was lower at the date of the hearing than for an indefinite time prior thereto. Comparative figures were submitted, and deductions made therefrom, which purport to show that the revenue from the operation of the Boston-Philadelphia line of the respondent furnishes a return considerably in excess of the cost of operation, and that the per ton-mile revenue on that line is greater than the per ton-mile revenue on other lines operated by the respondent. Other than the presentation of general data in denial and a showing of deficits suffered by the respondent company on its operations as a whole, no evidence in refutation of the complainant's contention in this regard was offered on behalf of the carrier. In response to request made at the hearing for a statement showing the results of operation on the Boston-Philadelphia line for the year 1920 as compared with the year 1919 it was stated on behalf of the respondent that its accounts were not kept in such manner as to permit the segregation of revenues and expenses of that line from those of other lines operated by it.

Comparisons were made between rail rates and water rates, and the respondent's principal witness stated that its rates on wool should be on a level with the rail rates on that commodity. This statement, however, has not deeply impressed us in the absence of evidence of record from which such an inference could be drawn. Admission was made by the carrier that the only territory where it maintains rates on a parity with rail rates is between Boston and points north of Cape Hatteras. It was pointed out that switching charges at

both Boston and Philadelphia are absorbed out of the wool rates of the rail carriers, while the port-to-port rates of the Merchants and Miners Transportation Company under attack do not include this terminal service. Such port-to-port rates of the respondent do, however, absorb marine insurance. With reference to measuring water rates by rail rates, the Board said in Investigation and Suspension Docket No. 1 (1 S. B. 21), "there is such a manifest difference between transportation via rail and via water that rail rates can not be regarded as a proper criterion or measure of water rates," and we see no reason in the instant case to warrant a change of our views on this subject.

With regard to the risk involved in transporting wool and related articles as compared with boots and shoes and cotton piece goods, it was testified by the complainant that the only damage to which wool is subject is that occasioned by wetting, and that danger of damage by fire, theft, or careless handling is remote. Wool is shipped in uniform bags or bales, requires no special equipment and only a minimum amount of attention in handling, and is readily adaptable for stowage with other shipments. These facts are indicative of its greater desirability as traffic from the standpoint of liability assumed by the carrier for loss or damage. Data were submitted by the carrier indicating that the amount paid in settlement of claims for loss and damage to shipments of wool on the Boston-Philadelphia line during the year 1920 exceeded that paid with respect to claims for loss and damage to shipments of boots and shoes and cotton piece goods. In the light of the vastly greater volume of wool handled, however, these figures are insufficient to support the contention which they purport to sustain.

The complainant claims that reasonable port-to-port rates between Boston and Philadelphia should include terminal deliveries, and that the practice of limiting such rates strictly from pier to pier is unreasonable, but it submitted no evidence which would justify the Board in ordering a modification of the present practice of the transportation company in confining the application of the rates to the service which it holds itself out to perform as a common carrier.

THE ISSUE OF DISCRIMINATION.

The complainant alleges that the respondent's rates on wool and related articles between Boston and Philadelphia are unduly prejudicial when compared with its rates on boots and shoes, cotton piece goods, and iron and steel articles; and that its local carload rates on all commodities moving between these ports are unduly prejudicial by reason of the fact that they do not include terminal deliveries, whereas its proportional or joint through rates via said

ports absorb terminal-delivery charges—all in violation of section 16 of the Shipping act.

It is manifest of record that no competition exists between wool and boots and shoes, cotton piece goods, and iron and steel articles. It is therefore recognized that the rates on wool can not be prejudiced by the rates on the latter commodities. Prejudice to shippers and receivers of wool can not be predicated upon the charges for transporting other products which differ essentially in character from wool and supply widely dissimilar demands.

Considerable evidence was presented by the complainant to sustain its contention that the refusal of the Merchants and Miners Transportation Company to group, on the one hand, all receiving and delivering points in the cities of Boston, Cambridge, Everett, Chelsea, and Somerville, which are located within the so-called Metropolitan Boston Switching District, and, on the other hand, all receiving and delivering points within the free lighterage limits and waterfront locations of Philadelphia, and to apply the same rates to and from each point in such groups in connection with port-to-port traffic between Boston and Philadelphia, while observing this practice as to other traffic, constitutes undue prejudice. The record evinces, however, that the deliveries to and from points in the Metropolitan Boston Switching District and at Philadelphia upon which the allegation of undue prejudice is based are in every instance performed in connection with through rail-and-water traffic and are not in any respect governed by tariffs either filed with or subject to the jurisdiction of the Board. Clearly, the conditions compelling absorption by this respondent of terminal charges at Boston and Philadelphia in connection with through rail-and-water traffic do not apply with equal force to its local traffic.

Other issues were raised by the complaints, but inasmuch as no evidence was offered in support thereof it is unnecessary to consider them in this report.

According due consideration to all the factors pertinent to the issues involved and the facts and circumstances of record, we conclude and decide that the rates complained of were not and are not unduly prejudicial. The period during which the assailed rates were applicable was one of rapidly changing values and costs and of varying commercial and transportation conditions. It is impossible, therefore, to state that said rates were unjust or unreasonable in the past; but we find that the present rates of the respondent on wool and related articles between Boston and Philadelphia are and for the future will be unjust and unreasonable in violation of section 18 of the shipping act to the extent that they exceed the following rates

which we determine and prescribe as just and reasonable maximum rates to be applied on this traffic in the future:

Reasonable maximum rates on wool and related articles between Boston and Philadelphia.

[In cents per 100 pounds.]

Commodity.	Boston to Philadelphia.	Philadelphia to Boston.
Wool in grease:		
Carload ¹	40	40
Less carload.....	58½	58½
Wool scoured:		
Carload ²	48½	48½
Less carload.....	65	65
Noils:		
Carload ²	48½	48½
Less carload.....	65	65
Tops:		
Carload ²	58½	58½
Less carload.....	65	65
Waste:		
Carload ²	45	45
Less carload.....	55	55

¹ Minimum carload weight, 16,000 pounds.

² Minimum carload weight, 10,000 pounds.

NOTE.—The above rates apply on the commodities as described and set forth in Merchants and Miners Transportation Company Tariff S. B. 171, in effect at the time of the hearing.

The rates found reasonable for the future apply from pier to pier only and do not include delivery to, from, and between receiving and delivering points within the free lighterage limits and waterfront locations of Boston and Philadelphia.

We further find that respondent's practice of limiting its port-to-port rates from pier to pier and refusing to group, on the one hand, all-receiving and delivering points within the so-called Metropolitan Boston Switching District, and, on the other hand, all receiving and delivering points within the free lighterage limits and waterfront locations of Philadelphia and to apply its port-to-port rates to and from such points in connection with Boston-Philadelphia traffic, was not and is not unreasonable or unduly prejudicial.

In view of the foregoing conclusions, reparation is denied.

An order will be entered accordingly.

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the second day of December, 1921.

Formal Complaints Nos. 8 and 10.

Boston Wool Trade Association

v.

Merchants and Miners Transportation Company.

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 Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the Merchants and Miners Transportation Company, the above-named respondent, be, and it is hereby, notified and required to cease and desist, on or before January 1, 1922, and thereafter to abstain from publishing, demanding, or collecting its present rates for the transportation of wool and mohair in grease, scoured, noils, tops, and waste between Boston and Philadelphia.

It is further ordered, That said respondent be, and it is hereby, notified and required to establish, on or before January 1, 1922, upon one day's notice to the Board and to the general public by filing and posting in accordance with section 18 of the Federal shipping act and Tariff Circular No. 1, and thereafter to maintain and apply to the transportation of wool and mohair in grease, scoured, noils, tops, and waste between Boston and Philadelphia, rates not to exceed those herein prescribed as reasonable maximum rates.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect unless otherwise ordered by the Board.

By the Board.

[SEAL.]

CLIFFORD W. SMITH,
Secretary.

DOCKET No. 11

BOSTON WOOL TRADE ASSOCIATION

v.

MERCHANTS AND MINERS TRANSPORTATION
COMPANY

Submitted September 30, 1921. Decided December 13, 1921

Practice of respondent in accepting only as less-than-carload traffic, and applying less-than-carload rates to, certain shipments of wool and related articles, not shown to be unjust or unreasonable. Practice, under existing embargoes, of accepting shipments of wool only after application for, and apportionment of, space not shown to be unduly preferential to shippers of other commodities, nor unduly prejudicial to shippers of wool. Complaint dismissed.

H. A. Davis for the complainant.

Otis B. Kent for the respondent.

REPORT OF THE BOARD

No exceptions were filed to the report proposed by the examiner in this case. The complainant filed a motion to reopen the case for the introduction of further evidence, which motion, after due consideration, is denied.

The complainant, a voluntary association of individuals, partnerships, and corporations, engaged in the purchase and sale of wool, with headquarters at Boston, Mass., alleges by complaint seasonably filed that certain practices of the Merchants and Miners Transportation Company in connection with the receiving of wool and related articles and the application of less-than-carload rates to shipments of these commodities between Boston and Philadelphia were unduly preferential to shippers of other commodities and unduly prejudicial to shippers of wool, in violation of section 16 of the shipping act, and unjust and unreasonable in violation of section 18 of that act. The Board is asked to effect a discontinuance of these practices and to award reparation.

According to the record, embargoes against carload freight were in effect on the Boston-Philadelphia line of the respondent carrier during the spring and summer of 1920, which, it is claimed, were made necessary by unprecedented traffic congestion throughout the Eastern States. The carload minimum weights applicable to wool shipments between Boston and Philadelphia during the period under consideration were 16,000 pounds on wool in grease and 10,000 pounds on scoured wool. The carload rates on wool in grease and scoured, Boston to Philadelphia, were 36½ cents and 39½ cents per 100 pounds, respectively, as compared with 47½ cents and 53 cents less than carload. The rates, Philadelphia to Boston, on these commodities, were 39½ cents and 47½ cents carload and 47½ cents and 53 cents less than carload. Exhibits were submitted by the complainant showing that on several occasions within the foregoing embargo period shipments from one consignor to one consignee which aggregated more than the minimum carload weight were tendered to the carrier on the same day as carload traffic, but were transported on separate bills of lading at less-than-carload rates. In this connection our attention is directed by the complainant to a rule of the Official Classification governing the service of the Merchants and Miners Transportation Company which provides in effect that carload rates shall be applied to carload freight offered by one shipper for delivery to one consignee, and that but one freight bill shall be issued for the transportation of such freight.

The action of the respondent carrier in refusing to accept and transport shipments at carload rates was predicated upon the existence of the embargoes against carload traffic then in effect, and the question at issue resolves itself into a determination of whether the embargoes were properly invoked. The right of a common carrier to declare an embargo when the circumstances warrant such action is established, as is also the fact that the necessity for placing embargoes is a matter to be determined in the first instance by the carrier. On the other hand an embargo is an emergency measure to be resorted to only where there is congestion of traffic, or when it is impossible to transport the freight offered because of physical limitations of the carrier. During the existence of the embargo, the common carrier obligations of the transportation company are suspended insofar as the embargo has application, and the reality of a situation sufficient to justify this suspension of obligations is requisite if the embargo is to be justified.

While the complainant contends that the embargoes were placed by the carrier in order to increase its revenue and were not justified by traffic conditions then prevalent, no convincing evidence in support of this contention is given. On the contrary, ample evidence is of record with respect to the severely congested condition of traffic

during the period under consideration. Contemporaneous embargoes were in effect by rail carriers which diverted to the water lines considerable volumes of traffic ordinarily handled by the railroads. In the case of some traffic the carrier embargoed it altogether, and numerous commodities were put on the prohibited list. Iron and steel articles and structural steel over 24 feet in length were prohibited from moving on all lines operated by the respondent, including the Boston-Philadelphia line. Evidence of record clearly shows that in common with the experience of other carriers, both rail and water, the respondent carrier found the situation beyond its control and that under the circumstances the exercise of its right to seek to remedy conditions through the medium of embargoes was justified.

That portion of the complaint alleging undue preference in favor of shippers of other commodities and undue prejudice against shippers of wool and related articles is addressed to the practice of the carrier in apportioning available space in its vessels among shippers of wool pursuant to a clause in its embargoes which provided that shipments of wool would only be accepted after arrangements for space had been made with the forwarding agent of the carrier. It was testified on behalf of the carrier that the purpose of this practice was to insure a degree of service to all shippers, and that if all the wool offered for transportation had been accepted no other commodities could have been transported. It was further testified in this connection that the space in the vessels of the respondent was apportioned as equitably as possible among the shippers who had previously notified the forwarding agent that they had wool to move, in consequence of which all shippers were able to have some of their traffic handled on each sailing. A table put in evidence by the complainant and designed to show the tonnage of all commodities handled on the Boston-Philadelphia line of the respondent for one month within the embargo period as illustrative of the relative amounts of tonnage handled during the whole of said period, is as follows:

Commodity	Week ending—				
	Mar. 6	Mar. 13	Mar. 20	Mar. 27	Apr. 3
	<i>Tons</i>	<i>Tons</i>	<i>Tons</i>	<i>Tons</i>	<i>Tons</i>
Boots and shoes.....	29	40	89	38	28
Dry goods.....	21	17	45	57	39
Hides and leather.....	69	49	58	47	20
Iron and steel articles.....	63	18	36	27	3
Machinery.....	11	3	10	14	10
Miscellaneous.....	441	240	224	212	114
Pa per.....	15		245	9	6
Wool.....	319	251	145	250	172
Potatoes.....			166	206	203
	2 steamers	1 steamer	2 steamers	2 steamers	1 steamer

It will be noted from the above that over 31 percent of the total tonnage handled was wool, and that with possibly one or two excep-

tions this commodity comprised the largest tonnage of the cargo of each vessel operated. Moreover, the volume of wool shipments between Boston and Philadelphia was stated by the complainant to exceed that between any other two points in the United States, corroborating the testimony of the carrier's witnesses that a special rule of treatment for wool was necessary during the embargo period in order that other commodities as well might move.

A careful examination of the record fails to disclose evidence sufficient to warrant a finding that the practice of the respondent in accepting only as less-than-carload traffic and applying less-than-carload rates to the shipments involved in this complaint was unjust or unreasonable; or that its practice in apportioning available space in its vessels during the period under consideration was unduly preferential to shippers of other commodities or unduly prejudicial to shippers of wool and related articles. The complaint, therefore, will be dismissed.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 13th day of December 1921.

Formal Complaint No. 11

Boston Wool Trade Association

v.

Merchants and Miners Transportation Company

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

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

By the Board.

[SEAL]

J. P. JAMES,
Acting Secretary.

BOSTON WOOL TRADE ASSOCIATION

v.

EASTERN STEAMSHIP LINES, INCORPORATED.

Submitted March 15, 1922. Decided March 27, 1922.

Rates on wool, mohair, camel hair, and alpaca hair, when in grease and scoured, between New York and Boston, found unreasonable but not unduly prejudicial. Reparation denied. Reasonable rates for the future prescribed.

H. A. Davis for the complainant.

W. L. Clark and Edwin H. Duff for the respondent.

REPORT OF THE BOARD.

A report proposed by the examiner which does not differ in substance herefrom was served upon the parties. Exceptions thereto were filed on behalf of both the complainant and respondent and have been given careful consideration.

The complainant, a voluntary association of wool dealers with headquarters at Boston, Mass., alleges by complaint seasonably filed that the rates exacted by the Eastern Steamship Lines, Incorporated (Metropolitan Steamship Line), since December 15, 1918, for the transportation of wool, mohair, camel hair, and alpaca hair, when in grease and scoured, between Boston and New York, were and are unduly prejudicial to shippers of these commodities and unduly preferential to shippers of other commodities in violation of section 16 of the Federal shipping act and unjust and unreasonable in violation of section 18 of that act. The board is requested to prescribe reasonable and nondiscriminatory rates for the future and to award reparation.

It was developed at the hearing that a large part of the wool transported via water between New York and Boston originates in foreign countries and in territory west of the Mississippi River, is transhipped at one of these ports from foreign or coastwise vessels, and moves on through bills of lading from the point of origin to the port of destination. The issues presented in this case, however, are confined to the local rates of the respondent between New York and Boston. While the volume of movement of foreign and domestic wool transhipped to the respondent's vessels for transportation between New York and Boston is northbound, it is indicated by the

record that the local wool traffic between these ports is more equally distributed as to direction. Included in such local traffic are shipments of mohair, camel hair, and alpaca hair, which commodities are similar in practically all respects to wool from a transportation standpoint and are carried under the same ratings. In our consideration of the issues involved, the terms "wool" and "wool and related articles" as used in this report comprehend wool, mohair, camel hair, and alpaca hair.

The local rates alleged by the complainant to be unjust and unreasonable are the same as the contemporaneous rail rates, and considerable evidence was presented by the parties regarding the cost of water transportation as compared with the cost of rail transportation. Data and exhibits were incorporated in the record on behalf of the complainant association which tend to show that the operating costs of rail carriers are in excess of those of water carriers: no evidence of particularity and definiteness sufficient to disprove which was offered by the respondent. Obviously there is objection to the application of data which are based upon the cost of service of water carriers at large to the cost of service rendered by the Metropolitan Steamship Line, and the probative force of the complainant's evidence on this point is weakened because of its generality. It was indicated on behalf of the complainant, however, that in the absence of unusual difficulties encountered in the operation of the respondent's vessels or of exceptional requirements calling for extraordinary expenditures in the maintenance of its service (such as do not appear of record in this case and which it was claimed do not obtain so far as the service performed by the respondent is concerned), the rates complained of should be lower than the contemporaneous rates of the rail carriers.

Changing commercial and economic conditions resulting in decreased operating costs are alleged by the complainant and urged as a pertinent factor for consideration in determining the reasonableness of the local rates of the respondent on wool between New York and Boston. Claim is made to the effect that the cost of labor and the prices of materials and supplies, which form the bulk of the operating expense of the carrier, have undergone a substantial decrease. The testimony offered on behalf of both parties in this connection is general in character, but it affords sufficient basis for the conclusion that the operating costs of the respondent carrier at the date of hearing were lower than those which prevailed at the time of the decision of the board in *Increased Rates, 1920*, 1 U. S. S. B. 13, on August 24, 1920, under authority of which the respondent's rates were advanced 40 per cent.

Much of the evidence of the complainant was addressed to the contention that the local rates of the carrier on wool and related articles between New York and Boston should not exceed the proportion of the through rates on these commodities which it receives in connection with through interstate traffic. In short, the complainant desires that the rates shown in the respondent's proportional tariff applying from New York to Boston on traffic received from southern coastwise steamship lines at New York be made the basis of the local rates between those ports. The following table shows a comparison of the local and proportional rates in effect during the period covered by the complaint:

Rates on wool and mohair between New York and Boston.

[In cents per 100 pounds.]

	Wool and mohair in grease.				Wool and mohair scoured.			
	Compressed.		Uncompressed.		Compressed.		Uncompressed.	
	Car-load.	Less than car-load.	Car-load.	Less than car-load.	Car-load.	Less than car-load.	Car-load.	Less than car-load.
<i>Local rates.</i>								
Dec. 15, 1918, to June 16, 1919.....	31½	52½	31½	52½	41½	62	41½	77½
June 16, 1919, to Oct. 11, 1919.....	31½ 29	52½	31½	52½	41½ 36½	62	41½	77½
Oct. 11, 1919, to Apr. 28, 1920.....	30 29	47½	30	47½	39½ 36½	53	39½	66½
Apr. 28, 1920, to Aug. 28, 1920.....	30	47½	30	47½	39½	53	39½	66½
Aug. 28, 1920, to date of hearing.....	42	66½	42	66½	55½	74	55½	92½
<i>Proportional rates (¹).</i>								
Dec. 15, 1918, to Sept. 2, 1920.....	15½	15½	22	22	15½	15½	22	22
Sept. 2, 1920, to date of hearing.....	21½	21½	31	31	21½	21½	31	31

¹ Applies from Boston to New York.

² Applies from New York to Boston.

It will be noted that at the date of the hearing the spread between the local and proportional carload rates on wool in grease, compressed and uncompressed, was 20½ cents and 11 cents per 100 per 100 pounds, respectively. The spread between the less-than-carload rates on this commodity in grease was 45 cents when compressed and 35½ cents when uncompressed; and in respect of scoured pounds, respectively; and on scoured wool, 34 cents and 24½ cents wool, 52½ cents compressed and 61½ cents uncompressed. While recognition is given to the fact that the cost of handling local traffic is generally greater than the cost of handling through traffic (*Increased Rates, 1920*, 1 U. S. S. B. 17), and due weight is accorded statements made on behalf of the respondent that the proportional rates involved are maintained for competitive reasons and do not afford a profit over and above the cost of service rendered, they

fall far short of furnishing a satisfactory explanation of the great excess of the local over the proportional rates. Further, in regard to the statements of the carrier's witness that the proportional rates on wool are not remunerative, it should be observed that the disparity between such rates and those alleged to be unreasonable strongly indicates that unduly high rates are exacted for the transportation of local traffic for the benefit of through interstate traffic.

The complainant rests its allegation of undue discrimination principally upon comparisons made between the rates under attack and those published by the respondent for application between New York and Boston on alum, sulphate of alumina, sulphate of ammonia, asphaltum, asphaltum substitutes, glucose, corn sirup, depilatory, molasses, pitch, sirup, and tar. The substantial dissimilarity existing between these commodities and wool, mohair, camel hair, and alpaca hair from a transportation standpoint is apparent. Admission was made on behalf of the complainant that its members are not in competition with manufacturers of or dealers in the commodities used for comparison, nor was it claimed that wool dealers were or are subjected to any disadvantage because the carrier accords rates on such commodities which are lower than the rates on wool and related articles. Some effort was also made to establish undue prejudice because of the fact that the rates assailed do not include certain terminal deliveries which are extended in connection with other traffic. According to the record, however, the terminal deliveries referred to are accorded by the respondent to through traffic and by rail carriers to through and local traffic between New York and Boston. It is shown that these deliveries are compelled by competition and other factors which do not so directly or immediately affect the local port-to-port traffic involved in this proceeding.

Other allegations contained in the complaint were not pressed at the hearing and need not be considered in this report.

Upon all the facts and circumstances of record the board concludes and decides that the rates complained of were not and are not unduly preferential or unduly prejudicial. The board further finds that said rates have not been shown to have been unjust or unreasonable in the past, but that they are and for the future will be unjust and unreasonable in violation of section 18 of the shipping act to the extent that they exceed the rates shown below, which we determine and prescribe as just and reasonable maximum rates for application by the respondent to this traffic in the future:

Reasonable maximum rates on wool and related articles between New York and Boston.

[In cents per 100 pounds.]

Commodity.	New York to Boston.		Boston to New York.	
	Carload.	Less than carload.	Carload.	Less than carload.
Wool, mohair, camel hair, alpaca hair, in grease ¹	38	55½	38	55½
Wool, mohair, camel hair, alpaca hair, scoured ²	46½	62	46½	62

¹ Minimum carload weight, 16,000 pounds.² Minimum carload weight, 10,000 pounds.

NOTE.—The above prescribed carload rates include deliveries to and from all points within the lighterage limits of New York Harbor as shown in Group II of Eastern Steamship Lines, Incorporated, Tariff S. B. No. 96, in effect at the date of the hearing. All rates prescribed above include marine insurance as shown in said tariff.

In view of the foregoing conclusions, reparation is denied.
An order will be entered accordingly.

1 U. S. S. B.

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 27th day of March, 1922.

Formal Complaint No. 9.
Boston Wool Trade Association

v.

Eastern Steamship Lines, Incorporated.

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

It is ordered, That the Eastern Steamship Lines, Incorporated, the above-named respondent, be, and is hereby, notified and required to cease and desist, on or before April 25, 1922, and thereafter to abstain from publishing, demanding, or collecting the rates for the transportation of wool, mohair, camel hair, and alpaca hair, in grease and scoured, between New York and Boston, herein found unjust and unreasonable.

It is further ordered, That said respondent be, and it is hereby, notified and required to establish, on or before April 25, 1922, upon one day's notice to the board and to the general public by filing and posting in accordance with section 18 of the Federal shipping act and Tariff Circular No. 1 of the board, and thereafter to maintain and apply to the transportation of wool, mohair, camel hair, and alpaca hair, in grease and scoured, between New York and Boston, rates not to exceed those herein prescribed as reasonable maximum rates.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect unless otherwise ordered by the board.

By the board.

[SEAL.]

CLIFFORD W. SMITH,
Secretary.

DOCKET No. 15.

EDEN MINING COMPANY AND TUNKY TRANSPORTATION & POWER COMPANY

v.

BLUEFIELDS FRUIT & STEAMSHIP COMPANY AND NEW ORLEANS-BLUEFIELDS FRUIT & TRANSPORTATION COMPANY.

Submitted August 16, 1922. Decided October 11, 1922.

Exaction of higher rates from complainants than from shippers who had agreed to give the respondent their exclusive patronage subjected complainants to undue and unreasonable prejudice and disadvantage, and constituted unjust discrimination between shippers, in violation of sections 16 and 17 of the shipping act. The unjust discrimination having been removed, and there being no proof of damage, complaint is dismissed.

G. F. Snyder, for the complainants.

John St. Paul, jr., for the respondents.

REPORT OF THE BOARD.

The proposed report of the examiner, which does not differ in substance herefrom, was served upon the parties. No exceptions thereto were filed on behalf of the carriers, but exceptions in respect to the question of reparation were received from the complainants and have been given careful consideration.

The complainants in this case are Delaware corporations engaged in the business of mining and furnishing power and transportation in the country of Nicaragua, Central America, with headquarters at Philadelphia, Pa. The respondents are corporations organized and existing under the laws of the States of Louisiana and Delaware, respectively, engaged as common carriers of property between ports in the State of Louisiana and ports in Nicaragua, and as such are subject to the provisions of the shipping act of 1916.

The complainants allege that in respect to shipments from New Orleans to Bluefields, Nicaragua, the respondents entered into, unfair and unjustly discriminatory contracts with certain shippers

whereby such shippers received a discount of 40 per cent from the respondent's tariff rates, although noncontract shippers, including the complainants, were accorded a discount of but 25 per cent from said tariff rates, thereby subjecting the complainants to undue disadvantage and unjust discrimination, all in violation of sections 14, 16, and 17 of the shipping act. At the hearing it was stated the alleged unlawful discrimination is no longer practiced by the carriers and that part of the complaint requesting the board to order its discontinuance was withdrawn, thus confining the issue to the propriety of the carriers' actions and the right of the complainants to reparation. It is also to be noted that no evidence was presented against the New Orleans-Bluefields Fruit & Transportation Company. A witness for the complainants stated this company was named a party under a misapprehension that the Bluefields Fruit & Steamship Company and another company had been consolidated to form the New Orleans-Bluefields Fruit & Transportation Company. The complaint, therefore, must be considered to relate only to the Bluefields Fruit & Steamship Company.

Supplement No. 1 to Bluefields Fruit & Steamship Company General Merchandise Tariff No. 17, effective May 10, 1919, provides that—

A discount of 25 per cent on tariff rates will be allowed on shipments to Bluefields, and 20 per cent on shipments to Cape Gracias, with the exception of lumber shipments, on which full tariff rates will apply to both points.

A further provision of Supplement No. 1 to this tariff reads:

To contractors contracting subject to the provisions of the laws of the United States a discount of 40 per cent is allowed in lieu of 25 per cent hereinabove set forth on shipments of general merchandise to Bluefields (only), with the exception of lumber, on which 20 per cent will be allowed.

Although this supplement uses the expression "discount of 25 per cent on tariff rates," the facts developed in this case plainly show that in each instance the rate which the carrier held out to the public as its regularly established transportation charge was 75 per cent of the rate quoted in the tariff. In other words, the carrier used this phraseology merely as a method of stating the rate, and it does not appear that any shipper was compelled to pay more than such regularly established rate. The only discount involved in this case, therefore, is the difference between the rates charged the complainants and those charged contract shippers.

According to the record, the consideration moving to the Bluefields Fruit & Steamship Company in respect of the contractual relation referred to in the last quoted tariff provision was to bind the shipper in writing to patronize that carrier exclusively in connection with all freight, goods, or merchandise shipped by him or controlled by

him between the port of New Orleans and the carrier's Nicaraguan ports of call. Exclusive patronage contracts were available to all shippers at New Orleans without exception and regardless of the amount of freight or number of shipments which any shipper had to move, the only requirement being that he use the line of the respondent and no other. The evidence shows that such agreements were had by the respondent with many shippers via its line from New Orleans to Bluefields and in addition, with consignees who received shipments at New Orleans on through bills of lading from European ports. The complainants were invited to enter into such an agreement, but because of a desire to avail themselves at opportune times of the services of other carriers operating between New Orleans and Nicaraguan ports they refused to become party thereto and were accordingly denied the lower rates enjoyed by contract shippers. It appears that except for one other carrier which operated during a part of the period covered by this complaint, the respondent furnished the only regular service between New Orleans and Bluefields. From October 2, 1919, to December 25, 1919, the complainants made a total of 14 shipments of general merchandise from New Orleans to Bluefields via the respondent's line, in connection with which a discount of 25 per cent from current tariff rates was given. At the same time and in many instances upon the same vessels were carried similar shipments for contract shippers who were accorded a discount of 40 per cent. All of these discounts were deducted from the amount of freight payable on bills rendered three days after sailing date.

On behalf of the Bluefields Fruit & Steamship Company it is contended that the agreements and higher rates attacked in the instant case as unlawfully discriminatory were necessary for the protection of its interests against tramp carriers and requisite for the maintenance of the service rendered by it. Because of the existence of the contracts for exclusive patronage, it is stated, the carrier had knowledge from past transactions as to what shippers would have freight to move and the approximate amount of such freight. In this way, it is claimed, the respondent was enabled to arrange its schedules and provided necessary tonnage for the conduct of its business.

The facts as shown by the record of this proceeding are analogous to those involved in *Menacho et al. v. Ward et al.*, 27 Fed. 529. In that case injunction was sought to restrain common carriers by water from charging higher rates to shippers who refused to agree to give the defendants their exclusive patronage than to shippers who had so agreed. The question presented for determination, propounded in the words of the court, was, "Can the defendants lawfully require

the complainants to pay more for carrying the same kind of merchandise under like conditions to the same places than they charge to others because the complainants refuse to patronize the defendants exclusively, while other shippers do not?" The following language, in part, was used in disposing of this question:

The vice of the discrimination here is that it is calculated to coerce all those who have occasion to employ common carriers between New York and Cuba from employing such agencies as may offer. Its tendency is to deprive the public of their legitimate opportunities to obtain carriage on the best terms they can. If it is tolerated it will result practically in giving the defendants a monopoly of the carrying trade between these places. Manifestly it is enforced by the defendants in order to discourage all others from attempting to serve the public as carriers between these places. Such discrimination is not only unreasonable, but is odious.

In regard to the contentions of the carriers in that case, the court made the following observation:

The proposition is speciously put that the carrier may reasonably discriminate between two classes of shippers, the regular and the casual, and that such is the only discrimination here. Undoubtedly the carrier may adopt a commutation system, whereby those who furnish him regular traffic may obtain reduced rates, just as he may properly regulate his charges upon the basis of the quantity of traffic which he receives from different classes of shippers. But this is not the proposition to be discussed. The defendants assume to discriminate against the complainants, not because they do not furnish them a regular business, or a given number of shipments, or a certain quantity of merchandise to carry, but because they refuse to patronize the defendants exclusively.

The benefits which accrue to a common carrier if it may make lower rates to those who ship by it exclusively are plain, and that such a policy may be advantageous to the carrier which practices it may be granted, but it has long since been recognized that those who conduct a public employment must forego many methods of obtaining business and holding it which are permissible in private enterprise. In the case quoted from above, the status of the common law with respect to exclusive patronage contracts by common carriers is fairly represented. It pronounces the common-law doctrine that such contracts are lawful only in the event they are made with a view that in return for the lower rate the carrier shall receive from the shipper regular consignments of freight, or a given number of shipments, or a certain quantity of merchandise for transportation. The evidence in the instant case is conclusive that none of these elements was a consideration for the lower rate extended to contract shippers. In the words of witness for the respondent, "The one and only condition was that they confine shipments to our line. * * * Our idea in securing these exclusive contracts was to keep shippers from patronizing other lines." It is manifest, therefore, that regardless of how

cepted, they were accorded the substantial equality of treatment contemplated by sections 16 and 17 of the act. This contention, however, is as unconvincing here as when used in support of other kinds of unjust discrimination resulting from unfair conditions imposed by carriers upon shippers. Under the statute, the complainants, as members of the shipping public, were entitled to have their shipments carried at the same rates as other patrons who received identical service. This right attached to each individual transportation transaction as such, and was not to be predicated upon any condition imposed by the respondent restricting the complainants' freedom of choice as to what carrier or carriers they should elect to patronize in connection with subsequent shipments.

Some reliance is placed by the respondent upon the decision in *United States v. Prince Line, Ltd., et al.*, 220 Fed. 230, holding that in respect to commerce of the United States the practice of a combination of foreign carriers to give deferred rebates to all shippers who patronized their lines exclusively was not an unlawful restraint of trade in violation of the Sherman Antitrust Act. However, the question there involved was not one of undue discrimination between shippers, with which we are now concerned, but one as to the propriety of carriers combining to prevent competition by other lines. The inapplicability of this decision to the complaint before us is further evident when it is observed that Congress, by the subsequent passage of the shipping act, has inhibited and condemned as unlawful the very practice out of which the case arose. It is likewise to be noted, in connection with the case relied upon by the respondent, that the Supreme Court of the United States declined to affirm the decision there rendered. *United States v. Prince Line, Ltd., et al.*, 242 U. S. 537.

No evidence was adduced relating to any action of the respondent tending to show direct or indirect retaliation against the complainants for patronizing other carriers. Likewise, from the facts of record it is clear that the contracts for exclusive patronage complained of were not to any extent based upon volume of freight offered. That part of the complaint alleging violations by the carrier of paragraphs 3 and 4 of section 14 of the act is, therefore, without support.

In regard to reparation which the board is requested to award, the record shows that the total amount of freight paid by the Eden Mining Company and the Tunky Transportation & Power Company for the carriage of the 14 shipments relative to which complaint is made was \$5,576.08. The difference between this amount and the sum which would have been paid had the complainants been given a discount of 40 per cent similarly as were contract shippers is \$1,113.30. The complainants content themselves with showing these

facts, taking the position that as this latter amount represents the extent of the unlawful discrimination to which they were subjected, the fact and measure of their damage are thereby established, and that they are entitled to recover such amount as a matter of course under authority of section 22 of the act. No evidence is submitted relative to any expense incurred, loss of profits, or damage of any sort suffered as a result of the wrong of the respondent, the complainants insisting that, under the statute, mere proof of the amount by which the rates charged them exceeds those charged contract shippers for identical transportation service *ipso facto* establishes the fact of their injury and the amount of their damage.

We think that to accept the contention of the complainants in this connection would be to read into the statute a meaning which its plain wording does not warrant. Section 22 of the act provides that any person may file with the board a sworn complaint setting forth any violation thereof, and asking "reparation for the injury, if any, caused thereby." It further provides that in the event certain requirements of the statute are met, the board "may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation." It can not be inferred from the language used that compensation for other than the actual damage incurred is to be granted. It may be that in a case of this character the injury sustained by the complainants because of the unlawful discrimination practiced was greater than the amount of the difference between the rates charged them and preferred shippers, or it may be that it was less. As was said in connection with this subject in a similar case involving reparation under a practically identical statute: "The statute gives a right of action for damages to the injured party, and by the use of these legal terms clearly indicated that the damages recoverable were those known to the law and intended as compensation for the injury sustained. It is elementary that in a suit at law both the fact and the amount of damage must be proved. And although the plaintiff insists that in all cases like this the fact and amount of pecuniary loss is a matter of law, yet this contention is not sustained by the language of the act, nor is it well founded in actual experience." *Pennsylvania Railroad Company v. International Coal Mining Company*, 230 U. S. 184.

While, as in the instant case, the fact of discrimination in violation of provisions of the shipping act may be proved and the board find accordingly, in respect to awarding reparation under section 22 of the act for injury alleged to have been caused by such discrimination, the fact of injury and the exact amount of pecuniary damage must be shown by further and other proof before the board may extend relief. We think it is clear that proof of unlawful dis-

crimination within the meaning of the act, by showing the charging of different rates from shippers receiving the same service, does not, as a matter of course, establish the fact of injury and the amount of damage to which the complainants may be entitled by way of reparation.

After full consideration of all the facts and evidence of record, the board concludes and decides that the exaction of higher rates from the complainants than from other shippers for like service under the circumstances involved in this case subjected the complainants to undue and unreasonable prejudice and disadvantage, and constituted unjust discrimination between shippers, in violation of sections 16 and 17 of the shipping act. Inasmuch as these violations have been discontinued, and no specific injury to complainants was proved, the complaint is dismissed.

An order will be entered accordingly.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 11th day of October, 1922.

Formal Complaint No. 15.

Eden Mining Company and Tunky Transportation & Power Company v. Bluefields Fruit & Steamship Company and New Orleans-Bluefields Fruit & Transportation Company.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said 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, without prejudice.

By the board.

[SEAL.]

CLIFFORD W. SMITH,
Secretary.

BOSTON WOOL TRADE ASSOCIATION

v.

GENERAL STEAMSHIP CORPORATION, OCEANIC
STEAMSHIP COMPANY, AND UNION
STEAMSHIP COMPANY.

Submitted June 14, 1923. Decided July 17, 1923.

Practice of respondents in routing shipments via water from port of transshipment to destination, charging of same through rates thereon as for shipments moving via rail from said transshipment port, and failure to absorb wharfage charges, State toll, and war tax not shown to have been unduly prejudicial, unjustly discriminatory, or unjust and unreasonable, in violation of sections 16, 17, and 18, as alleged. Complaint dismissed.

H. A. Davis for complainant.

Sherman L. Whipple for Oceanic Steamship Company and Union Steamship Company.

REPORT OF THE BOARD.

Exceptions to the examiner's proposed report in this case were filed on behalf of the complainant and have been given careful consideration.

The complainant is a voluntary association of wool dealers engaged in the purchase and sale of wool and other commodities, with headquarters at Boston, Mass. By complaint filed under authority of section 22 of the Federal shipping act, it alleges that during the years 1920 and 1921 the respondents improperly diverted and routed certain shipments of wool en route from ports in Australia to Boston on through bills of lading after their arrival at San Francisco; that its members were compelled to pay rates in excess of those applicable via the route transported, and extra charges thereon; and that on other shipments of the same commodity transported from Australia to Boston the complainant's members were required to pay charges in excess of the bill of lading rates. Said practice, rates, and charges are alleged to be unduly prejudicial, unjustly discriminatory, and unjust and unreasonable, in violation of sections 16, 17, and 18 of the act. The board is requested to effect a discontinuance of the alleged violations and to award reparation.

The complainant contends that all the wool concerned in this proceeding was shipped with the understanding that rail transportation was to be provided from San Francisco to Boston and that the car-

riers here respondent arbitrarily diverted certain shipments at San Francisco via the Panama Canal. In regard to the shipments claimed to have been thus diverted, the complainant association urges that its members are entitled to reparation in an amount equal to the difference between the rail rate and the water rate from San Francisco to Boston, together with the cost of marine insurance and wharfage charges at Boston, which it is indicated would not have been incurred had the wool been transported via rail. That part of the complaint alleging the exaction of charges in excess of the bill of lading rates is addressed to the fact that in respect to certain shipments the movement of which from San Francisco was via rail, the complainant's members were required to pay State tolls and war tax in addition to the prepaid through rates applicable from Australian ports to Boston.

A review of the evidence of record fails to disclose facts sufficient to substantiate the complainant's general allegation that the respondent carriers contracted for the transportation of all the wool shipments involved in this case "with the understanding that all-rail routing from the port of San Francisco" was to be provided. In fact, no evidence is presented which tends to prove the existence of any understanding between the parties relative to routing except such as is furnished by bills of lading and copies of letters submitted as exhibits. An examination of these bills of lading shows that in a number of cases rail routing from San Francisco is specified, and the evidence on this point is clear that rail routing was in fact accorded all shipments thereby covered, unless request was received from the consignees to ship via water. In respect to other bills of lading submitted as typical the routing from San Francisco is not specified, but, like the bills of lading designating rail routing just considered, there is stamped thereon the notation "Any increase in rail rate over \$——¹ per 100 pounds charged at signing of this bill of lading is to be paid by consignee prior to delivery of goods." In this connection the record indicates that this notation was entered on all bills of lading during a part of the period covered by this complaint because of contemplated increases in rail rates from San Francisco to Boston, and that the purpose of its insertion was to insure protection of the respondents' revenue in those cases where circumstances made it desirable for them to route shipments via rail from San Francisco. In no instance is it shown by the record that this notation was intended to have the effect of compelling rail routing; and from the facts before us we think it is not possible to conclude that it did so require. We are of opinion, therefore, that in regard to all of those shipments covered by bills of lading which did not specifically provide for rail routing the complainant fails

¹ \$1.66½ wool in grease; \$2.16½ wool scoured.

to show the respondent steamship companies were obligated to forward via rail from San Francisco, and that the diversion alleged is unsustainable in the premises.

In support of its allegation that the rates charged its members were unlawful and of its claim of right to reparation in connection therewith, the complainant directs our attention to the fact that its members were charged $1\frac{5}{8}$ pence per pound on wool in grease and $1\frac{7}{8}$ pence per pound on scoured wool for transportation from Australian ports to Boston, whether the shipments moved via water from San Francisco or overland therefrom. Emphasis is placed upon the contention that as the local water rates per 100 pounds from San Francisco to Boston during the period covered by this complaint were less than the corresponding rail rates, in respect to those shipments involved in this proceeding which moved via water from San Francisco the consignees were entitled to have the through rates of $1\frac{5}{8}$ pence and $1\frac{7}{8}$ pence per pound on wool in grease and scoured, respectively, reduced in an amount equal to the difference between such water and rail rates. This contention is based, it is asserted, upon the familiar traffic rule that a shipper is required to pay only the rate chargeable via the route which his goods are transported. Manifestly this rule is predicated upon the existence of alternative routes with differences in through rates.

The facts of record in this proceeding indicate that the agreement of the parties was one for a through service without regard to the method of transportation employed from San Francisco. The consideration for this through service was not a combination of the local rates to and from San Francisco, but a single through charge, regardless of whether the transportation was from Australia to San Francisco and thence via rail to Boston or from Australia to San Francisco and thence via the Panama Canal to Boston. Such through charge was the same via either route. In other words, in the instant case we have alternative routes, but no difference in rates. The rates assailed were likewise the same as the rates charged by the respondents for carriage from Australia to Pacific coast ports and the same as those charged by carriers operating from Australia direct to Boston via the Panama Canal. Out of its through rates the respondents absorbed the cost of carriage from San Francisco to Boston; and having in mind that no obligation is shown by the evidence to have rested upon the respondents to forward via rail, we think it obvious that no basis exists for the claim for refund of the difference between the local rail and canal rates or for the charge that the rates applied were unduly prejudicial or unjustly discriminatory in violation of sections 16 and 17 of the statute. It should be here stated that as section 18 of the shipping act relates to carriers in interstate commerce exclusively its requirements have no application to the respondents in this case.

Regarding the complainant's claim for reparation for amounts paid for wharfage at Boston and for marine insurance from San Francisco, we deem it sufficient to observe that nowhere in the record is it shown that the carriers agreed to absorb the former or that it was not properly payable by the consignees. In fact, upon each of the 11 bills of lading issued by the General Steamship Corporation and submitted as exhibits on behalf of the complainant is stamped the notation "Wharfage, storage, or handling charges if incurred at port of delivery to be borne by consignee." In connection with marine insurance, however, exhibits in the form of letters and telegrams are submitted which show that both the General Steamship Corporation and the Union Steamship Company agreed to absorb the insurance from San Francisco on shipments forwarded by them through the canal. The record as a whole substantiates the claim of the complainant that this agreement was not carried out, and that up to the time of the hearing reimbursement for premiums paid by consignees had not been made. In the circumstances, if the amounts referred to have not been refunded, the complainant's members concerned should present an appropriate claim to the respondents named, who should thereupon adjust the matter promptly.

Regarding the complainant's additional claim for refund of amounts paid by its members for State tolls and war tax on shipments carried via rail from San Francisco, it is shown by the evidence that neither is a transportation charge. The first is a charge upon cargo levied by State authorities to provide revenue for the maintenance of wharves over which the complainant's shipments moved. No provision is contained in any of the exemplar bills of lading presented at the hearing which would in any manner relieve the complainant's members from payment of this toll, nor is there evidence of any agreement by the carriers to absorb the same. With respect to the war tax of 3 per cent, which is levied upon the transportation charge as such, it is specifically provided by section 501 of the Federal revenue act, under authority of which the tax in this case was assessed, that it "shall be paid by the person paying for the services or facilities rendered."

Other allegations included in the complaint are unsupported by evidence of record and need not be considered in this report.

After examination of all the facts and circumstances of record in this proceeding, the board concludes and decides that the practice, rates, and charges of the respondent steamship companies complained of have not been shown to be unduly prejudicial, unjustly discriminatory, or unjust and unreasonable in violation of sections 16, 17, and 18 of the shipping act, as alleged. The complaint, therefore, will be dismissed.

An order will be entered accordingly.

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 17th day of July, 1923.

Formal Complaint No. 12.

Boston Wool Trade Association v. General Steamship Corporation, Oceanic Steamship Company, and Union 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 board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

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

By the board.

(Sgd)

CLIFFORD W. SMITH,
Secretary.

[SEAL.]

DOCKET No. 13

AMERICAN TOBACCO COMPANY

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH
LINE)

Submitted May 24, 1923. Decided July 17, 1923

Charges exacted for transportation of collect shipments unduly prejudicial to complainant, unduly preferential of its competitors, and unjustly discriminatory, in violation of sections 16 and 17 of shipping act, to extent they exceeded prepaid charges on like shipments from and to the same ports, plus such additional costs as carrier was compelled to absorb over and above those accruing in connection with prepaid shipments.

Extent of injury, if any, to which complainant subjected not afforded by this record, and case assigned for further hearing in respect to any such injury and the amount of reparation to which complainant may be entitled.

Jonathan Holmes for the complainant.

Joseph P. Nolan for the respondent.

REPORT OF THE BOARD

Proposed report in this proceeding was served upon the parties, and exceptions thereto filed on behalf of the respondent carrier have been given careful consideration.

The complainant in this case is a New Jersey corporation engaged in the manufacture and distribution of tobacco products and cigarette papers, with principal offices in New York, N. Y. The respondent is a corporation organized and existing under the laws of the Republic of France, having an office in New York, N. Y., and is engaged as a common carrier in the transportation of property between ports in the United States and France, in which common-carrier capacity it is subject to the applicable provisions of the Federal shipping act of 1916.

By complaint filed under authority of section 22 of the shipping act the American Tobacco Company alleges that in respect to certain shipments transported by the respondent steamship company

it was subjected to undue and unreasonable prejudice and disadvantage and to the payment of unjustly discriminatory rates, in violation of sections 16 and 17 of that statute. Inasmuch as it was shown at the hearing that the alleged unlawful charges of the carrier are no longer exacted, that part of the complaint requesting the board to order the discontinuance thereof may be disregarded. Consideration of the case in this report, therefore, will be confined to a determination of the issue of unjust discrimination as relates to the charges of the carrier in the past. It should also be noted at this point that if unjust discrimination is found to have existed, the question whether the complainant is entitled to reparation will be determined from evidence to be submitted at a supplemental hearing.

According to the record, it appears that during the period April 7, 1919, to January 3, 1921, there were carried for the account of the complainant by the French Line from Bordeaux and Havre to New York 279 shipments of cigarette papers in books and cigarette paper in bobbins, for which service freight charges in the total sum of \$99,755.47 were collected upon delivery at destination. It is shown by the evidence that these charges were calculated upon a fixed basis of 5 francs to the dollar in New York, and that on prepaid shipments of identical commodities carried for other of its patrons from Bordeaux and Havre to New York during the same period, and in many instances upon the same vessel, the respondent accepted payment in France of freight charges in francs at the current rate of exchange. The result was that the complainant paid more than its competitors for transportation of the same character of commodity from and to the same ports. Thus, for illustration, the freight on cigarette papers on December 19, 1919, was 60 francs per cubic meter. With respect to a shipment of 12.890 cubic meters of this commodity covered by bill of lading issued on that date the complainant paid as freight upon arrival at New York on January 5, 1920, the sum of \$154.68, or at the rate of \$12 per cubic meter. At the current rate of exchange of 11.18 francs per \$1, as shown in the table following, it is seen that the charge to complainant's competitors in connection with shipments carried on the same vessel was but \$5.36 per cubic meter, or \$6.64 per cubic meter less than the amount paid by complainant. The difference between the charges on all shipments carried for the complainant on the basis of 5 francs to one dollar and what those charges would have been on the basis of the actual rate of exchange in effect on the dates such shipments were made is alleged to be \$53,840, which amount is claimed as reparation.

Rate of exchange at port of origin on date of bill of lading

Date	Francs per dollar	Dollar per franc	Date	Francs per dollar	Dollar per franc	Date	Francs per dollar	Dollar per franc
1919			1919			1920		
Apr. 7	5.88	0.1701	Dec. 19	11.18	0.0894	June 30	12.15	0.0823
Apr. 22	6.02	.1661	Dec. 27	10.54½	.0948	July 20	12.23½	.0817
Apr. 25	6.11	.1637	Dec. 30	10.74½	.0931	July 23	13.14	.0761
Apr. 26	6.08	.1645				July 30	13.07½	.0765
May 17	6.45	.1550	1920			July 31	13.10½	.0768
May 21	6.64½	.1505	Jan. 5	10.75½	.0930	Aug. 4	14.04	.0712
May 22	6.63	.1508	Jan. 6	10.75	.0930	Aug. 7	13.93	.0718
July 9	6.84	.1461	Jan. 10	11.14	.0898	Aug. 14	13.82	.0723
July 10	6.87	.1455	Jan. 17	11.57	.0864	Aug. 20	14.12	.0708
July 19	7.07½	.1413	Jan. 31	13.22	.0756	Aug. 21	14.12	.0708
July 30	7.26	.1377	Feb. 13	14.33½	.0698	Aug. 26	14.19	.0705
Aug. 2	7.28	.1374	Feb. 15	14.11	.0709	Sept. 8	14.82½	.0675
Aug. 7	7.74	.1292	Feb. 24	14.24½	.0702	Sept. 10	14.85½	.0673
Aug. 15	7.79½	.1283	Feb. 29	14.29½	.0700	Sept. 24	14.84	.0674
Aug. 20	8.17½	.1228	Mar. 10	13.44	.0744	Sept. 25	14.84	.0674
Aug. 23	8.17	.1224	Mar. 13	13.41½	.0745	Sept. 27	15.01	.0666
Sept. 11	8.40½	.1190	Mar. 23	14.93½	.0669	Sept. 29	14.91½	.0670
Sept. 18	8.74	.1144	Mar. 26	14.40	.0694	Oct. 2	14.84½	.0674
Oct. 3	8.44½	.1183	Mar. 27	14.40	.0694	Oct. 12	15.30	.0654
Oct. 4	8.41½	.1188	Mar. 30	14.90½	.0671	Oct. 16	15.40	.0649
Oct. 10	8.49½	.1177	Mar. 31	14.97	.0668	Oct. 18	15.45	.0647
Oct. 18	8.62½	.1159	Apr. 7	15.34	.0652	Oct. 25	15.49½	.0645
Oct. 25	8.66	.1154	Apr. 8	15.26	.0655	Oct. 30	15.65½	.0639
Oct. 27	8.61½	.1161	Apr. 10	15.81	.0633	Nov. 9	17.29	.0578
Oct. 28	8.67½	.1153	Apr. 17	16.22	.0617	Nov. 24	16.40	.0610
Nov. 8	9.01½	.1109	Apr. 24	16.63½	.0601	Nov. 25	16.71½	.0598
Nov. 12	9.54	.1048	Apr. 30	16.66½	.0600	Dec. 2	16.45	.0608
Nov. 13	9.34	.1071	May 22	13.90	.0719	Dec. 6	16.79½	.0595
Nov. 18	9.61	.1041	May 29	13.75	.0727	Dec. 18	16.73½	.0598
Nov. 22	9.61½	.1040	June 7	12.98	.0770	Dec. 23	16.83½	.0594
Nov. 24	9.60	.1042	June 8	12.99½	.0769	Dec. 25	16.83½	.0594
Nov. 29	9.75½	.1025	June 14	13.22½	.0756			
Nov. 30	9.75½	.1025	June 19	12.50½	.0800	1921		
Dec. 6	10.78	.0927	June 26	12.03	.0831	Jan. 3	17.07½	.0586

Included in the record are copies of printed tariffs from which the charges for the transportation of the shipments involved in this proceeding were determined. Appearing upon each is the notation:

Important notice.—For shipments accepted with freight payable at destination, the rates of this tariff shall be converted into dollars on the fixed basis of five francs per dollar.

Evidence is presented on behalf of the French Line to the effect that, owing to the stringent financial situation prevailing in France during the period covered by the complaint, the carrier found it desirable to obtain possession of freight money in France at the earliest possible date, and in order to induce prepayment of charges it was found expedient to adopt the method of conversion of rates indicated in the above-quoted tariff provision. In this connection no evidence is of record tending to show why the respondent did not resort to the fundamental right inherent in it as a common carrier to demand and receive payment of freight charges as a condition precedent to transportation.

Stress is laid by the carrier upon the contention that the complainant had equal opportunity with other shippers of cigarette papers to avail itself of the lower charges accorded prepaid shipment.

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ments, and that as it elected to pay for the service rendered upon delivery at destination it is precluded from alleging unjust discrimination under the statute. Knowledge of the lower charges to be had by prepayment is denied on behalf of the complainant, and the evidence as a whole on this point is conflicting.

Section 16 of the Federal shipping act declares it unlawful for any common carrier within the purview thereof, directly or indirectly, "to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." By section 17 of that act it is provided "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." The manifest purpose of these provisions is to require common carriers subject to the statute to accord like treatment to all shippers who apply for and receive the same service; in view of which purpose if the tariff condition subjected the complainant to undue discrimination, his knowledge or lack of knowledge of such condition is plainly immaterial. In order to determine whether the complainant in the instant case was in fact subjected to undue and unreasonable prejudice and disadvantage and paid unjustly discriminatory charges for transportation, as alleged, it is pertinent, therefore, under the provisions of the statute above quoted, to consider whether the service furnished the complainant differed from that furnished shippers of cigarette paper who prepaid their freight and who were accorded lower charges.

The evidence of record indicates that, from a transportation standpoint, the shipments of the complainant were similar in every respect to those of shippers of cigarette paper who prepaid their freight. In so far as their actual physical handling and transportation were concerned, the record is conclusive that the service rendered by the respondent in connection with the consignments of each class of shippers was in every particular identical. It follows that unless conditions incident to the handling and transportation of the complainant's collect shipments existed which warranted the higher charges exacted, discrimination within the contemplation of the statute is established. Conversely, such conditions, to justify the higher charges, must have resulted in some detriment to the carrier comparable in degree to the amount of such higher charges.

In this relation contention is made on behalf of the French Line that the higher charges paid by the complainant were justified because the service rendered in connection with its collect shipments

was of a more expensive character than that rendered shippers of cigarette paper who prepaid their freight. In support thereof it is shown that it was necessary for the respondent to insure the freight on collect shipments or to assume the risk of loss in the event of disaster at sea, as well as to absorb the cost of cabling the freight money collected at destination to France. On the other hand, it is shown by the complainant that the marine insurance rate was but 25 cents per \$100 on paper in bulk and 75 cents per \$100 on paper in books, and that war-risk insurance averaged 7.2 cents per \$100 during the period covered by the complaint. The exact cost of cabling does not appear of record. As a whole, the evidence clearly indicates that the difference in the charges exacted from the complainant and from shippers who prepaid their freight greatly and unduly exceeded the total amount of the carrier's additional expenditures resulting from its transportation of the complainant's shipments freight collect. As these incidents of the transportation service in connection with the complainant's collect shipments resulted in added expense to the carrier, however, the cost thereof might properly be reflected in a higher charge than for prepaid shipments.

From a consideration of all the facts and evidence of record, the board concludes and decides that, under the circumstances of this case, the charges collected from complainant were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the shipping act, to the extent that they exceeded the prepaid charges on like shipments from and to the same ports, plus such additional costs as the respondent was compelled to absorb over and above those accruing in connection with prepaid shipments. The record does not afford a basis for finding the extent, if any, to which the complainant has been injured, and the case will be assigned for further hearing in respect to any such injury and the amount of reparation to which the complainant may be entitled.

DOCKET No. 21

JUDSON L. THOMSON MANUFACTURING COMPANY

v.

EASTERN STEAMSHIP LINES, INCORPORATED

Submitted May 2, 1924. Decided August 5, 1924

Rates on iron and steel rivets, brass or copper coated, in less than carloads, from Boston to New York, found unreasonable. Reasonable maximum rate for the future prescribed; complainant entitled to reparation.

George F. Mahoney for complainant.

W. H. Blasdale for respondent.

REPORT OF THE BOARD

A report proposed by the examiner in this case was served upon the parties, and exceptions thereto filed on behalf of the respondent have been duly considered.

The complainant is a corporation organized and existing under the laws of the State of Massachusetts, and is engaged in the business of rivet manufacturing at Waltham in that State. By complaint seasonably filed it alleges that the port-to-port rates charged by the Eastern Steamship Lines, Incorporated, on less-than-carload shipments of its product from Boston to New York during the period September 3, 1921, to January 27, 1923, inclusive, were unjust and unreasonable in violation of section 18 of the Federal shipping act. The board is requested to effect a discontinuance of said alleged violation, to establish a just and reasonable maximum rate for the future, and to award reparation. Rates will be stated in cents per 100 pounds.

The commodity shipped was iron and steel rivets of different sizes, coated with brass or copper, in boxes containing 25,000, 50,000, or 100,000 rivets each, and weighing from 50 to 100 pounds per box. All the shipments concerned were consigned to the New York branch house of the complainant corporation. Fourth-class rates of 42 cents and 38 cents, published in the respondent's tariffs S. B. Nos. 96 and 165, effective August 28, 1920, and July 1, 1922, respectively, were exacted, whereas it is claimed contemporaneous commodity rates of 28 cents and 25 cents, provided in the same tariffs to apply on rivets as listed in special iron and steel list in respondent's Excep-

tions to the Official Classification S. B. No. 76 and its reissue S. B. No. 182, should have been charged.

The applicability of the lower rates contended for by the complainant is predicated upon the alleged similarity between the commodity shipped and plain iron and steel rivets in regard to which such lower rates were and are chargeable. The evidence presented on behalf of both parties is, as a whole, directed toward comparisons of the two classes of rivets, the complainant urging that they are in all respects the same, and the respondent that they are distinct and different. Comparisons are also drawn in regard to various other commodities in the rough and the same commodities when coated or when advanced in stage of manufacture over the primary article.

According to the record, shipments of the complainant's product are made to New York almost daily, and brass or copper coated iron and steel rivets are in direct competition with plain iron and steel rivets. The brass or copper coating is intended to make them more desirable for use in matching materials in which they are placed and enhances their value from 2 to 3 cents per 1,000 rivets (their commercial unit), but does not add perceptibly to their weight. The testimony and exhibits before us are conclusive that by all ordinary tests rivets made of iron or steel and coated with brass or copper are not distinguishable from plain iron or steel rivets except in the matter of color. In their various forms and sizes, the weight, packing, risk, and other elements incident to these commodities are practically the same; and in all respects, except as to value, they are, from a transportation standpoint, identical. A careful examination of the record indicates that this element of value is the sole reason for the maintenance on coated rivets of rates in excess of those applicable on iron and steel rivets uncoated. Value, of course, is a factor properly to be considered by carriers in the determination of rates for their service, but where two commodities are practically identical in transportation characteristics and are directly competitive, any difference in the values of such commodities should be appreciable and substantial in order to justify the application of higher rates on the one than on the other. This condition is not met in the instant case.

Evidence was adduced by both parties relative to a question of interpretation of the applicable tariffs conceived by the complainant to impose a duty upon the respondent to charge the lower commodity rates involved. In view of the above conclusions regarding the reasonableness of the rates attacked, however, consideration of such evidence is deemed unnecessary.

According due consideration to all the facts and evidence of record, the board concludes and decides that the rates assailed were, are, and for the future will be, unjust and unreasonable in violation

of section 18 of the statute to the extent which they exceeded, exceed, or may exceed 28 cents from September 3, 1921, to July 1, 1922, and 25 cents on and after July 1, 1922; that the complainant made the shipments as described, and paid and bore the charges thereon; that it has been injured thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable, and that it is entitled to reparation. The complainant is directed to comply with Rule XXI of the Rules of Practice.

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UNITED STATES SHIPPING BOARD

DOCKET No. 23

THE PORT UTILITIES COMMISSION OF CHARLESTON,
S. C., ET AL.

v.

THE CAROLINA COMPANY, ET AL

DOCKET No. 25

THE NORFOLK PORT COMMISSION

v.

ALGERIAN-AMERICAN LINES; ET AL.

DOCKET No. 26

THE PORT DIFFERENTIAL INVESTIGATION

Submitted November 25, 1924. Decided January 20, 1925

On export traffic to certain foreign destinations, existing differentials and rates not shown to unduly prejudice South Atlantic ports in favor of North Atlantic ports, as alleged; maintenance of same rates from Atlantic and Gulf ports on so-called parity commodities not shown to constitute undue prejudice or unjust discrimination, as alleged. Upon investigation, present rate adjustment between North Atlantic, South Atlantic, and Gulf ports to foreign destinations indicated not shown to be unduly prejudicial or unjustly discriminatory.

Tripartite conference agreement unfair as between carriers and operates to the detriment of commerce of the United States.

Charles S. Belsterling for Isthmian Steamship Lines; *Roscoe H. Hupper* for Anchor-Donaldson Line, Anchor Line, American Levant Line, Booth American Shipping Corporation, Bristol City Line. Chas. Hill & Sons (Inc.), Compania Transatlantica, Cosulich Line.

Phelps Bros. & Co., Cunard Steamship Co. (Ltd.), Ellerman's Phoenix Line, Ellerman's Wilson Line, Fabre Line, Jas. W. Elwell & Co. (Inc.), Agents, French Line, Compagnie Generale Transatlantique, Furness Lines, Furness, Withy & Co. (Ltd.), Hamburg-American Line, Holland-America Line, International Mercantile Marine Co., American Line, Ellerman & Bucknall Steamship Co. (Ltd.), Frederick Leyland & Co. (Inc.), Red Star Line, White Star Line, Atlantic Transport Corporation of West Virginia, Lamport & Holt, Lloyd Sabaudo, National Steam Navigation Co. of Greece, N. Galanos & Co., Navigazione Generale Italiana, Italia America Shipping Corp., North German Lloyd, Royal Mail Steam Packet Co., Sicala Americana, Peirce Bros. (Inc.), Agents, Societa Nazionale Di Navigazione, Swedish American Line, Thomson Line, Transatlantica Italiana, McDonnell & Truda, Agents, United American Lines, United States Navigation Co., Ybarra Co., Donaldson Line; *Frank P. Latimer* for South Atlantic Steamship Conference; *W. Ainsworth Parker* for Donaldson Line; *N. O. Pedrick* for Gulf Operators of Emergency Fleet Corporation; *Robert Ramsay* and *W. A. Ramsay* for Donaldson Steamship Line; *Joseph Scott* for Transmarine Lines; *Matthew Hale* for South Atlantic Steamship Association.

William Allen for Board of Commissioners of the Port of New Orleans; *Geo. T. Atkins* for Missouri-Kansas-Texas Lines; *Chas. J. Austin* for New York Produce Exchange; *L. V. Beatty* for Kansas City Southern Railway; *A. E. Beck* for Baltimore Association of Commerce; *Elmer S. Chace* for City of Providence, R. I.; *W. H. Chandler* for Merchants Association of New York; *R. G. Cobb* for Mobile Chamber of Commerce; *Julius Henry Cohen* for Port of New York Authority; *Willis Crane* and *Fayette B. Dow* for Western Petroleum Refiners Association; *William C. Ermon* for Southern Traffic League; *C. J. Faga* for Chamber of Commerce of Newark, N. J.; *R. C. Fulbright* for Houston Cotton Exchange and Board of Trade; *E. B. Gaines* for City of Savannah and Savannah Board of Trade; *M. D. Greer* for The Texas Company; *H. H. Haines* for Chamber of Commerce of Houston, Tex., and Navigation and Canal Commission of Houston, and City of Houston; *Richard K. Hale* for Department of Public Works, Commonwealth of Massachusetts; *J. P. Haynes* and *Carl Giessow* for Chicago Association of Commerce; *G. Stewart Henderson* for Baltimore Chamber of Commerce; *Ernest E. Holdman* for Newport Company, Pensacola, Fla., and Bay Minette, Ala.; *B. Hoff Knight* for Port of Philadelphia Ocean Traffic Bureau; *Wilbur LaRoe, Jr.*, *F. S. Davis*, and *Frederick E. Brown* for Maritime Association of Boston Chamber of Commerce, Associated Industries of Massachusetts, Chamber of Commerce of Fall River, Mass., New Bedford (Mass.) Board of Commerce, New

London (Conn.) Chamber of Commerce, Chamber of Commerce of Portland, Me., and Chamber of Commerce of Providence, R. I.; *N. M. Leach* for Board of Commissioners of the Port of New Orleans; *R. L. McKellar* for Southern Railway System; *J. P. Magill* for Maritime Association of the Port of New York; *P. W. Moore* for Queensboro Chamber of Commerce (Long Island City, N. Y.); *Carl Giessow* and *Edgar Moulton* for New Orleans Joint Traffic Bureau; *J. V. Norman*, *T. J. Burke*, and *T. D. Guthrie* for Port Utilities Commission of Charleston, S. C., Municipal Docks and Terminals of the Port of Jacksonville, and Jacksonville Traffic Bureau; *O. C. Olsen* for Missouri Pacific Railroad; *P. W. Reed* for Pensacola Chamber of Commerce; *O. A. Reynolds* for Newport News Chamber of Commerce; *W. M. Rhett* for Illinois Central Railroad Company; *Gordon Saussy* for City of Savannah; *James H. Devlin* for the Commonwealth of Massachusetts; *Samuel Silverman* and *E. Mark Sullivan* for City of Boston; *H. Y. Taylor* for Chamber of Commerce and Shipping, Port Arthur, Tex., Chamber of Commerce, Beaumont, Tex.; Chamber of Commerce, Orange, Tex., and Texas City Board of Trade; *E. H. Thornton* for Galveston Chamber of Commerce, Galveston Cotton Exchange, and Galveston Board of Trade; *A. G. King* and *H. J. Wagner* for Norfolk Port Commission and Hampton Roads Maritime Exchange; *H. M. Thompson* for Hampton Roads Maritime Exchange; *Jay R. Benton* for Division of Waterways & Public Lands, Commonwealth of Massachusetts; *George F. Feeney* for Portland, Me.; *F. A. Leffingwell* for Texas Industrial Traffic League and Southwestern Industrial Traffic League; *Malcolm M. Stewart* and *H. B. Arledge* for Middle West Foreign Trade Committee; *R. F. Clerc* for New Orleans Board of Trade and New Orleans Belt Railroad Commission; *Chas. E. Gurney* for Public Utilities Commission of Maine, and *Matthew Hale* for Macon, Ga., Chamber of Commerce, and Augusta, Ga., Chamber of Commerce.

REPORT OF THE BOARD

The Port Utilities Commission of Charleston, S. C. and The Municipal Docks and Terminals of the Port of Jacksonville, Fla., filed with the board on May 13, 1924, under section 22 of the shipping act, 1916, a complaint against The Carolina Co., Trostdal, Plant & Lafonta, and Tampa Inter-Ocean Steamship Co., which was given Docket No. 23, assailing as unjustly discriminatory and unreasonable, in violation of sections 17 and 18 of said act, the establishment and maintenance of rates from South Atlantic ports of the United States to European and certain other foreign ports differentially higher than corresponding rates contemporaneously

maintained from North Atlantic ports of the United States to said ports. On July 26, 1924, the Norfolk Port Commission filed a complaint, Docket No. 25, against the same and other water carriers wherein it attacked as unduly discriminatory, in violation of sections 16 and 17 of said shipping act, the practice of applying parity rates from North Atlantic, South Atlantic, and Gulf ports of the United States to said foreign ports. Numerous intervening petitions on behalf of ports from Portland, Me., to Galveston, Tex., as well as on behalf of other interests, were filed in both cases, and additional complaints involving substantially the same matters were about to be filed. At this juncture the board, in order to avoid multiplicity of hearings, and in the welfare of the general public, instituted upon its own motion by its order of August 5, 1924, The Port Differential Investigation, Docket No. 26, for the purpose of determining to what extent, if any, the rates and charges in respect to the transportation of freight traffic from North Atlantic, South Atlantic, and Gulf ports of the United States to United Kingdom, Baltic Scandinavian, Continental European, Portuguese-Spanish, Mediterranean, and/or Adriatic, Black Sea, and Levant ports, the practice of maintaining on certain commodities differentials in favor of North Atlantic and against South Atlantic and Gulf ports, and differentials in favor of North Atlantic and South Atlantic ports against Gulf ports of the United States, and the practice of maintaining on certain other commodities parity rates from said United States ports to said foreign ports via common carriers by water subject to the shipping act, 1916, are unduly prejudicial to or unduly preferential of particular ports, persons, or traffic, or unjustly discriminatory in violation of sections 16 and 17 of said shipping act, or are otherwise unlawful, and, if so found, to make such findings and order or orders as may appear proper in the premises.

Dockets 23 and 25 were consolidated with docket 26. A copy of the order instituting the investigation was served upon all common carriers by water subject to the shipping act and operating in the trades above described. A copy of the order was also served upon the parties and interveners in dockets 23 and 25, the combined issues of which are practically coextensive with the inquiry comprehended by the general investigation. Notice of the time and place of hearing was duly given to all parties and interveners, the general public was advised thereof through the press, and everyone was given full opportunity to be heard. The three cases were heard together before an examiner, were argued jointly before the board, and will be disposed of in one report. The record shows that the respondent Isthmian Steamship Line is not engaged in the trade comprehended within the proceeding.

The complaint in docket 23 alleges, among other things, that the rates involved are unreasonable, in violation of section 18 of the shipping act. It is only necessary here to point out that section 18 applies to interstate rates, charges, and practices of common carriers by water, whereas the rates, charges, and practices here under consideration apply in connection with the transportation of freight from ports in the United States to ports in foreign countries. Accordingly, this phase of the complaint will be given no further consideration in this report.

Sections 16 and 17 of the shipping act, in so far as they have application to the present proceeding, provide:

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. * * *

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. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

It will be observed that the character of discrimination inhibited by these provisions of the statute is discrimination which is undue, unreasonable, or unjust. Whether that measure of discrimination is established by this record it is the province of the board to determine.

The record exhibits that for rate-making purposes the ports on the Atlantic and Gulf coasts of the United States have been placed into three distinct groups: namely, the North Atlantic group, which embraces all ports from Portland, Me., to Norfolk, Va., inclusive; the South Atlantic group, which embraces all Atlantic ports south of Norfolk, and the Gulf group, which includes all United States ports on the Gulf of Mexico. Prior to the war there was no such definite groupings of ports for the purpose of establishing fixed rate relationships. It is of record that on certain traffic moving from the Gulf to Hamburg at that time, the rate was 10 cents per hundred pounds in excess of the corresponding rate from New York; that on traffic moving from Boston to Europe the rate was sometimes lower than the corresponding rate from New York; and that with regard to Philadelphia and Baltimore, as compared with New York and Boston, the relationship between the rates varied. In

other words, it was not a matter of agreement between carriers as to what the rate relationship between ports should be, but was the exercise by individual carriers of their right to fix rates which to them seemed justified by the conditions. Following the cessation of the war, and some time prior to April, 1920, there was evolved a system of port grouping and differentials. In April, 1920, the grouping of ports was as above indicated and the rates to the foreign ports in question were applied on the differential principle, the amount of the differential in favor of the North Atlantic ports and against the Gulf ports generally being 15 cents per 100 pounds, or 5 cents per cubic foot, and against the South Atlantic ports $7\frac{1}{2}$ cents per 100 pounds, or $2\frac{1}{2}$ cents per cubic foot.

On April 22 and 23, 1920, the members of the North Atlantic, South Atlantic, and Gulf steamship conferences in joint meeting adopted the aforementioned grouping plan and also the differentials then existing. The details of this conference situation will not be gone into at this point, and reference is made thereto only for historical purposes. Generally speaking, the amounts of the differentials have remained the same up to the present time. Just what influenced the fixation or adoption of these differentials is not reflected by the record. There is some testimony, however, to the effect that when the differentials were agreed upon among the conferences the intent was to fix percentage differentials: for example, 15 per cent instead of 15 cents. Evidence is of record that in 1920, at the time the differentials were agreed upon among the conferences, the general level of rates from the North Atlantic ports to the foreign ports involved in this proceeding was \$1 per 100 pounds, whereas now it is about half that amount, such change, of course, markedly affecting the relationship between the differentials and the rates. It is therefore manifest that the high percentage relationship which the differentials to-day bear to the rates is a matter of more concern to the shipper than was the relationship which obtained in 1920.

Neither the Charleston nor the Norfolk complaint challenged the propriety of the practice of grouping ports for rate-making purposes, nor the general fairness of the present grouping; and while at the hearing some criticism was made of the sweep of the North Atlantic group the record as a whole does not reveal any widespread dissatisfaction with the prevailing groups. Such criticism as was made in this connection was directed against the inevitable resultant of any grouping system, i. e., that there is always some disparity between the distance from the various points in a group to a common market.

It is natural and consistent with recognized principles of rate structures that the carriers should have in some manner grouped

these ports. The present grouping does not seem either unnatural nor is it established by the facts in this case that it is unduly discriminatory or otherwise in violation of the statute. It might be said in passing, that the board is not disposed to disturb port groupings which have prevailed for a considerable length of time and to which business has accustomed itself, except for very strong and compelling reasons.

Considerable stress was laid upon what were conceived to be wide differences in distance from a port in one group to the foreign ports as compared with the distance from a port in another group to the same ports. For example, it was shown that the distance from Boston to Liverpool was 3,058 miles, from Charleston to Liverpool 3,613 miles, and from New Orleans to Liverpool 4,686 miles, the North Atlantic carriers and some of the North Atlantic port interests contending that such marked difference in distance warranted the maintenance of rate differentials. The Gulf and South Atlantic interests on the other hand, contended that differences in distance should be largely ignored in this trade. The situation with respect to distances is adequately disclosed by the following table, which has been taken from data submitted of record:

Ocean distances in nautical miles from certain North Atlantic, South Atlantic, and Gulf ports to certain foreign ports

From—	Route	To—					
		Liverpool	Hamburg	Amsterdam	Havre	Barcelona	Marseille
North Atlantic ports:							
Boston.....	Winter..	2,928	3,469	3,231	3,013	3,540	3,716
	Summer	3,058	3,588	3,350	3,132	3,576	3,752
New York.....	Winter..	3,107	3,648	3,410	3,192	3,719	3,895
	Summer	3,219	3,749	3,511	3,293	3,737	3,913
Philadelphia.....	Winter..	3,250	3,791	3,529	3,335	3,862	4,038
	Summer	3,362	3,892	3,630	3,436	3,850	4,056
Baltimore.....	Winter..	3,393	3,934	3,696	3,476	4,002	4,178
	Summer	3,488	4,018	3,780	3,562	4,002	4,178
Norfolk.....	Winter..	3,272	3,813	3,575	3,357	3,881	4,057
	Summer	3,367	3,897	3,659	3,441	3,881	4,057
South Atlantic ports:							
Charleston.....	Winter..	3,440	4,081	3,819	3,625	4,131	4,307
	Summer	3,613	4,143	3,881	3,687	4,131	4,307
Savannah.....	Winter..	3,613	4,154	3,892	3,698	4,201	4,377
	Summer	3,686	4,216	3,954	3,760	4,201	4,377
Brunswick.....	Winter..	3,655	4,196	3,934	3,740	4,243	4,419
	Summer	3,728	4,258	3,996	3,802	4,243	4,419
Jacksonville.....	Winter..	3,692	4,233	3,971	3,777	4,276	4,452
	Summer	3,765	4,295	4,033	3,839	4,276	4,452
Gulf ports:							
Pensacola.....	Winter..	4,504	5,045	4,783	4,589	4,996	5,172
	Summer	4,577	5,107	4,845	4,651	4,996	5,172
Mobile.....	Winter..	4,544	5,085	4,823	4,629	5,036	5,212
	Summer	4,617	5,147	4,885	4,691	5,036	5,212
New Orleans.....	Winter..	4,613	5,154	4,892	4,698	5,105	5,281
	Summer	4,686	5,216	4,954	4,760	5,105	5,281
Average distance from North Atlantic ports.	Winter..	3,190	3,731	3,488	3,275	3,801	3,977
	Summer	3,259	3,829	3,586	3,373	3,815	3,901
Average distance from South Atlantic ports.	Winter..	3,625	4,166	3,904	3,710	4,213	4,389
	Summer	3,698	4,228	3,966	3,772	4,213	4,389
Average distance from Gulf ports	Winter..	4,654	5,095	4,833	4,639	5,046	5,222
	Summer	4,627	5,157	4,895	4,701	5,046	5,222

Authority.—Table of Distances Between Ports (H. O. No. 117), issued by the Hydrographic Office, United States Navy Department.

It was undisputed that by far the greatest volume of traffic moves from the North Atlantic ports and that a substantial part thereof is high-class package freight, whereas the general run of cargo moving from the South Atlantic and Gulf ports is low class, unmanufactured articles. The record shows, moreover, that the South Atlantic and Gulf ports draw most of their traffic, with the possible exception of grain and a few Pacific coast products, from territory which is regarded as local to those port groups, and that the North Atlantic cargoes are comprised to a large extent of traffic originating in the Middle West or what is known as central freight association territory. It is also apparent that the situation in regard to return cargoes is greatly in favor of the North Atlantic ports as compared with either the Gulf or South Atlantic ports. The same may be said as to turn-around, insurance, voyage time, and other items directly connected with transportation.

That traffic originating in central freight association territory was referred to throughout the hearing, and will be designated herein as competitive traffic. No definite figures as to the relative volume of competitive as compared with traffic originating locally to the ports are available in the record. It does not appear, however, that any substantial amount of this competitive traffic moves from the Gulf or South Atlantic ports, representatives of those two groups contending that the existing differentials are prohibitive so far as obtaining any of this traffic is concerned. Instances were also cited by such representatives of efforts to solicit this business, resulting in refusal on the part of producers and manufacturers to patronize the southern ports on account of the higher freight charge which would be assessed against their commodities by the water carriers. The same witnesses admitted, however, that the normal flow of this competitive traffic is through the North Atlantic ports and that in the absence of congestion or inability of such ports to handle this traffic it is not likely, even with parity rates, that any appreciable volume of it will move through the Gulf or South Atlantic ports, principally by reason of the greater distance to the European market and longer voyage time.

Respondent carriers operating from the North Atlantic ports contend that cost of operation is the fundamental or most important factor in the determination of rates and a witness appearing on behalf of these carriers testified that it costs approximately 35 per cent more to operate from the Gulf than from the North Atlantic, and 15 per cent more from the South Atlantic than from the North Atlantic ports. This North Atlantic witness admitted that regarded strictly from a cost basis, 15 per cent was probably high for the difference in cost as between the South Atlantic and North Atlantic ports. Representatives of the Gulf and South Atlantic admitted a

heavier cost of operation from their ports but denied that it amounts to 35 per cent, or 15 per cent, respectively, one witness stating that 15 per cent was probably as near as anyone could get to the difference in cost of operating a vessel, for example, between Boston and Liverpool and Houston and Liverpool. The South Atlantic and Gulf interests, however, minimize the importance of cost for that purpose, some witnesses even going to the extent of advocating that it should be disregarded in the trans-Atlantic trade. As illustrative of the difference in cost of operation from the three port groups an instance was cited of an 8,000-ton vessel operating from New York to Liverpool at a daily cost of \$350, not including overhead charges or the very important item of fuel. On the basis of the difference in sailing time of two days as between New York and Charleston to Liverpool, this would mean a difference in cost of operation against Charleston of \$700. The record shows that the sailing time from New Orleans to Liverpool is approximately six and two-thirds days more than from New York to that port, which results in a heavier cost of operation from the Gulf of \$2,333. Furthermore, these same carriers claim that the cost of operating vessels has not materially decreased from the cost level of 1920. The Gulf operators, although admitting that generally speaking cost of vessel operation and stevedoring are about the same as they were at that time, contend that they themselves are operating their vessels somewhat more cheaply now, due to the lower cost of fuel and the absence of port congestion.

As hereinbefore indicated, the circumstances surrounding the adoption of the present differentials by the steamship lines do not reveal any clearly defined rule or reason for their particular amount or measure. At the hearing, however, the theory was injected that the primary purpose of the differentials was to offset the additional cost of operation from the south Atlantic and Gulf ports over the north Atlantic ports on the basis of the then existing level of rates. If that were the desideratum it is difficult to understand why these differentials have not varied with the exceedingly large variation in rates. In making this observation the board does not concur in the theory that a carrier is justified in burdening a port with a differential for the sole and only reason that the cost of operation from that port is greater than from some other port. It is obvious to the board that many elements, such as volume of traffic, competition, distance, advantages of location, character of traffic, frequency of service, and others are properly to be considered in arriving at adjustment of rates as between ports; but even assuming that the theory advanced is valid it is plain from the facts in this case that it had not been adhered to by the carriers.

Counsel for the south Atlantic ports raises the point that should the board countenance a continuance of the present or any differentials such action would be in contravention of article 9, section 1, of the Constitution of the United States, which prohibits preferring a port in one State over a port in another State. The fallacy of this contention, however, is sufficiently demonstrated by decisions of the United States Supreme Court. (See *State of Pennsylvania v. Wheeling-Belmont Bridge Co., et al.*, 59 U. S. 421; *South Carolina v. Georgia, et al.*, 93 U. S. 4; *Armour Packing Co. v. United States*, 209 U. S. 56.)

It was also urged upon the board by counsel representing North Atlantic interests that inasmuch as many of the carriers do not operate from more than one district they can not be held accountable for any undue discrimination which may result from the existing rate situation. Counsel for the South Atlantic and Gulf interests contend, on the other hand, that although many of these carriers do not operate from more than one district, they are nevertheless responsible for the alleged undue discrimination. An examination of cases cited by counsel reveals that they involve railroad transportation, privileges local to a particular railroad, and through joint rates, all of which present different facts from those here present. It is established by this record that these common carriers by water, possessing the ability among other things to shift vessels from one port to another, voluntarily met and entered into a definite agreement that the differentials against certain ports should be such and such, and that none of the carriers, no matter from which ports they operated, should depart from those differentials while a party to such agreement. In view of the disposition we are making of this case, however, we do not deem it necessary to pass upon this question; but we take this occasion to state that in considering such a question the totally different conditions arising in water transportation as compared with railroad transportation should not be lost sight of.

Against the objection of counsel for the North Atlantic lines evidence was admitted which tended to show that in other trades, for example, the trans-Pacific and West Indies trades, distance to a large extent is disregarded in rate making. While we deem this evidence admissible in a proceeding of this character, yet its probative force may or may not be considerable, and we do not consider it to be our province or right to adjust rates in this particular trade on a basis which obtains in other trades in which there may be present entirely different circumstances and conditions with regard to cost of operation, character of cargoes, competition, and other matters. Accordingly, the failure to show similarity of conditions in the trades

in these respects derogates greatly from the value of evidence adduced on this point.

The South Atlantic and Gulf interests contend that because parities are accorded to certain commodities the carriers should be compelled to grant parities on other commodities. The Norfolk Port Commission, on the other hand, takes the position that the carriers should establish the existing differentials on all these parity commodities thereby eliminating all parities. Both of these contentions overlook the great difference in circumstances surrounding the present parity commodities and nonparity commodities. They also overlook the different operating conditions with respect to the three districts, and that there are many things which the carriers for traffic and business reasons may do which the board can not legally compel them to do.

Permeating the record in this case is the thought advanced primarily by counsel for the Port of New York Authority and the New England ports that rail-and-water rates from Central Freight Association territory to foreign destinations should be equalized through all these ports. Without attempting to pass upon this matter, which is manifestly beyond the scope of the board's jurisdiction, the board can only state that in the great public interest it would seem obvious that rate structures should be so made as to permit the flow of traffic to pass through as many ports as the economies of transportation and distribution will allow.

After consideration of all the facts, circumstances, and evidence of record in this proceeding, the board concludes and decides that complainants in docket No. 23 have not shown that the existing differentials and rates applicable to the foreign ports herein involved unduly prejudice South Atlantic ports in favor of North Atlantic ports, in violation of section 16 of the shipping act; that complainant in docket No. 25 has not shown that the maintenance of the same rates from Atlantic and Gulf ports to said foreign ports on so-called parity commodities constitutes an undue prejudice or unjust discrimination against the port of Norfolk, in violation of sections 16 and 17 of the shipping act, and that the evidence submitted in docket No. 26 fails to show the present rate adjustment between North Atlantic, South Atlantic, and Gulf ports to be unduly prejudicial or unjustly discriminatory, in violation of sections 16 and 17 of the shipping act.

Having disposed of the discriminatory phase of the case there remains for consideration the steamship conference situation. According to the record the North Atlantic conferences are composed of regular lines operating between North Atlantic ports and United Kingdom and European ports, the two North Atlantic-United Kingdom freight conferences having been organized in 1918 and

1919, and the North Atlantic-Continental freight conference on March 9, 1922. The South Atlantic Steamship Conference, embracing the regular lines operating from South Atlantic ports, was organized on March 11, 1920, and the Gulf Shipping Conference, (Inc.), was organized on March 13, 1920. The general purpose of these conferences is to establish and observe conference rates, rules and regulations directly affecting the trade.

In April, 1920, the conferences above named met and entered into an interlocking arrangement or agreement for the avowed purpose of effectively controlling the acts of member carriers from all Atlantic and Gulf ports with respect to rates. It was at this meeting that differentials against the South Atlantic and Gulf ports were adopted and also the parity and neutral commodity lists. Apparently the differentials were the hub of the tripartite conference agreement, in the absence of which there would in all likelihood not have been any joint agreement. It is clear from the record that there was very little, if any, consideration given to the interests of the shipping public in negotiating the agreement. The point is made that the South Atlantic and Gulf lines consented to the differentials in exchange for the agreement on the part of the North Atlantic lines to permit the former to charge rates on a parity with the North Atlantic rates on certain commodities, most of which are indigenous to South Atlantic and Gulf ports. It is very doubtful whether the South Atlantic or Gulf lines fully realize the probable effect of their action with regard to future adjustments of rates. In any event, they have at subsequent meetings of the three conference groups sought to have the differentials modified or abolished. An outstanding feature of the agreement is that the differentials can not be changed except by the unanimous vote of the three parties. The result is, so long as the North Atlantic regards the differential as favorable to itself and withholds its required consent the other two parties are powerless to change the situation. In other words, the practical result is that the South Atlantic and Gulf lines have irrevocably bound themselves to apply the differentials.

It is urged that the tripartite conference agreement and procedure of the joint conference meetings is based on voluntary action. This may be substantially true with respect to new matters which come before the conference for adoption, but when a rate or rule is once adopted and one party consistently and selfishly refuses to cast its consenting vote which would remove or change that rule or rate the conference to all intents and purposes ceases to be voluntary. Representatives of conference members from all three port groups admitted that the existing differentials against the South Atlantic and Gulf ports were uneconomic or unfair, but nevertheless efforts to revise them have been futile by virtue of the

present conference situation. It is therefore obvious that the differential situation is effectively controlled by the North Atlantic lines. In this connection it should be pointed out that the membership of the North Atlantic conferences is predominantly foreign. This foreign membership with votes outnumbering by far those of the American members, dominates the tripartite conference and the rates applicable to American commodities moving in American bottoms from American ports. The result is effective control by foreign lines of an extensive portion of our commerce and of much of our shipping. Manifestly, in view of the responsibility imposed in it for the upbuilding of an American merchant marine, this situation calls for unequivocal action on the part of the board.

Section 15 of the shipping act, 1916, enjoins upon common carriers by water subject to the act the duty of filing with the Shipping Board agreements of the character now under consideration. The term "agreement" as used in that section is stated to include understandings, conferences, and other arrangements whether oral or written. Paragraph 2 of said section provides:

The board 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 * * * unfair as between carriers, shippers, * * * or ports, or to operate to the detriment of the commerce of the United States.

and paragraph 3 provides:

It shall be unlawful to carry out any agreement or any portion thereof disapproved by the board.

Upon the record in this case the board finds that the existing tripartite arrangement or agreement between the North Atlantic, South Atlantic, and Gulf conferences and the steamship lines operating from ports on the North Atlantic, South Atlantic, and Gulf coasts of the United States to the foreign ports hereinbefore mentioned, is unfair as between carriers and is detrimental to the commerce of the United States.

Appropriate orders will be entered.

ORDERS

At a GENERAL SESSION of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 20th day of January, 1925.

Docket No. 23

Port Utilities Commission of Charleston, S. C., et al., v. The Carolina 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 board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

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

By the board.

[SEAL]

CARL P. KREMER,
Secretary.

Docket No. 25

Norfolk Port Commission v. Algerian-American 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 board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

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

By the board.

[SEAL]

CARL P. KREMER,
Secretary.

Docket No. 26

Port Differential Investigation

It appearing, That by order dated August 5, 1924, the board instituted an investigation with a view to determining whether and to what extent, if any, rates, charges, and practices of carriers sub-

ject to the shipping act, in respect to transportation of freight traffic from North Atlantic, South Atlantic and Gulf ports of the United States to United Kingdom, Baltic Scandinavian, Continental European, Portuguese-Spanish, Mediterranean, and/or Adriatic, Black Sea, and Levant ports are unduly prejudicial to, or unduly preferential of particular ports, persons, or traffic, or unjustly discriminatory, or otherwise unlawful, and to making such findings and order or orders as might appear proper in the premises; and

It further appearing, That full investigation of the matters and things involved has been made, and that the board, on the date hereof, has made and filed a report containing its findings of fact and conclusions 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 board.

[SEAL.]

CARL P. KREMER,
Secretary.

Docket No. 26

Port Differential Investigation

Whereas the board instituted an investigation into certain rates, charges, and practices of common carriers by water operating from North Atlantic, South Atlantic, and Gulf ports of the United States to United Kingdom, Baltic Scandinavian, Continental European, Portuguese-Spanish, Mediterranean, and/or Adriatic, Black Sea, and Levant ports; and

Whereas upon the record in that case, embracing facts and circumstances with reference to the joint or tripartite conference arrangement or agreement between said carriers in respect to rates, charges, and practices in connection with transportation of freight traffic from North Atlantic, South Atlantic, and Gulf ports to said foreign ports, the board found that said joint or tripartite conference arrangement or agreement is unfair as between carriers and operates to the detriment of commerce of the United States, within the meaning of section 15 of the shipping act; now, therefore, be it, and it is hereby,

Ordered, That said joint or tripartite conference arrangement or agreement be, and it is hereby, disapproved and canceled.

By the board.

[SEAL.]

CARL P. KREMER,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 22

CONTINENTAL ROOFING & MANUFACTURING COMPANY

v.

BALTIMORE AND CAROLINA STEAMSHIP COMPANY

Submitted November 11, 1924. Decided March 3, 1925

Rate on prepared roofing paper, in carloads, from Baltimore, Md., to Miami, Fla., not shown to be unduly or unreasonably prejudicial. Complaint dismissed.

James B. McNally, for complainant.

L. Vernon Miller, for respondent.

G. B. Cromwell, for Certainteed Products Corporation, intervener.

REPORT OF THE BOARD

Complainant is a corporation organized under the laws of the State of Maryland and is engaged in the manufacture of prepared roofing paper at Baltimore. By complaint seasonably filed it alleges that the commodity rate of the respondent carrier applicable to carload shipments of its product from Baltimore to Miami, Fla., is unduly and unreasonably prejudicial, in violation of section 16 of the shipping act. The board is requested to effect a discontinuance of said alleged violation. No issue as to the reasonableness of the rate attacked is raised. Rates will be stated in cents per 100 pounds.

The complainant is the only manufacturer of prepared roofing paper at Baltimore. Its principal competitors for Florida business are located at York, Pa., chief of whom is the Certainteed Products Corporation, an intervener in this proceeding on behalf of the carrier. Other competing manufacturers who ship to Miami via Baltimore and the respondent Baltimore & Carolina Steamship Company are located at Rowlandville, Md., and Erie, Pa. On carload shipments originating at each of these competing rail points the respondent maintains a proportional rate of 41 cents for its service from Baltimore to Miami, as is shown by applicable tariffs filed with the Interstate Commerce Commission and made a part of the record in this proceeding. In the case of both York and Rowlandville, this proportional rate results in an equalization of the through

rail-and-water rate with the local port-to-port rate from Baltimore of 55 cents under attack. This equalization is asserted to be in keeping with the general practice of the respondent to group rail points within a radius of 60 miles from Baltimore and to accord them such proportional rates to Miami and other southern ports of call as will maintain them practically on a parity with Baltimore. The present local port-to-port rate of 55 cents complained of and the proportional rate of 41 cents are reductions from 63½ cents and 49½ cents, respectively, which it appears were made as a result of solicitation by the manufacturers of prepared roofing paper at York for a lower through rate from York to Miami in order to meet New Orleans competition. This competition existed by reason of the opening of a roofing material manufacturing plant at New Orleans and the inauguration of service from that port to Miami by the Gulf & Southern Steamship Company.

According to the record, the Gulf & Southern Steamship Company has discontinued operation to Miami and the New Orleans manufacturer is not now a competitor of importance. Inasmuch as the respondent is the only carrier by water operating direct from Baltimore to Miami, and as its carload rates on prepared roofing paper to Miami are lower than via other routes, practically all of the shipments from Baltimore territory to that port are made over its line. Via the Merchants & Miners Transportation Company and the Clyde Line, with transshipment at Jacksonville, the carload rates from York and Baltimore are 67 cents and 63½ cents, respectively, and a rate of \$1.07 applies on this commodity from both York and Baltimore when moving via rail.

In support of its contention that the local port-to-port rate of 55 cents is unduly and unreasonably prejudicial, the complainant relies chiefly upon a comparison of that rate with the respondent's proportional rate of 41 cents accorded competitors' shipments originating at the rail points indicated. Stress is laid upon the amount of the differential between them, which, it is claimed, is of itself sufficient to warrant a charge of undue prejudice. Comparisons of this differential with those existing between local and proportional rates of the respondent from Baltimore to Miami applicable on other commodities are also made. Four of the commodities thus used, namely, slate roofing, asbestos tile, asbestos roofing, and wooden shingles, are shown to compete with prepared roofing paper; but in respect to each the local rate from Baltimore to Miami is the same or higher than the local rate on prepared roofing paper, and no effort is made to predicate the alleged undue prejudice upon comparison of the respective local rates. In addition, the complainant sets forth

the respondent's local port-to-port rate and the water proportional of through rail-and-water rates on carload shipment of prepared roofing paper to Charleston, S. C. The comparison advanced in this respect may be summarized by the following table:

From	To					
	Miami			Charleston		
	Local port to port	Through rail and water	Respondent's proportional	Local port to port	Through rail and water	Respondent's proportional
Baltimore.....	55			26		
York.....		55	41		34½	23
Rowlandville.....		55	41		37	23
Erle.....		64	41		46	23

Attention is directed by the complainant to the fact that while the difference between the local water rate and the water component of the through rail-and-water rate in connection with shipments to Miami is 14 cents, the difference between the corresponding rates to Charleston is but 3 cents, or a spread of 11 cents. This spread is urged upon the record as conclusive of the undue prejudice alleged, notwithstanding recognized dissimilarity between the ports and competitive carrier conditions. As to the rate which the complainant conceives should be established in lieu of the one attacked, it is indicated that as on shipments from Baltimore to Charleston the local port-to-port rate is 8½ cents under the through rate from York to Charleston, the local port-to-port rate to Miami should be 8½ cents under the York to Miami through rate, or 46½ cents instead of 55 cents. No contention is made, however, that the rate complained of is unduly prejudicial when compared with the corresponding local port-to-port rate to Charleston.

The above is a résumé of the complainant's case, and the defense of the carrier is confined within the scope thereof. It will be seen that in its entirety the evidence relied upon to establish the undue prejudice alleged is based upon comparisons of local rates on the one hand and proportional rates on the other, and no attempt is made to attack the lawfulness of the rate assailed by comparison with a rate of like character.

While recognizing that a comparison of a local port-to-port rate with the water component of a through rail-and-water rate not subject to the jurisdiction of this board is of some value, yet it is also recognized that standing alone a difference between such rates can not be considered as determinative of the lawfulness or unlawfulness of the local rate. Manifestly, widely dissimilar conditions

enter into the establishment and maintenance of these two classes of rates.

After examination of all the facts and circumstances of record in this proceeding, the board concludes and decides that the rate complained of has not been shown to be unduly or unreasonably prejudicial in violation of section 16 of the shipping act, as alleged. The complaint, therefore, will be dismissed.

An order will be entered accordingly.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 3d day of March, 1925

Formal Complaint No. 22

Continental Roofing & Manufacturing Company v. Baltimore and Carolina 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 Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

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

By the board.

[SEAL]

(Sgd) CARL P. KREMER,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 24

AMERICAN PEANUT CORPORATION

v.

MERCHANT & MINERS TRANSPORTATION COMPANY,
OLD DOMINION TRANSPORTATION COMPANY, AND
PHILADELPHIA & NORFOLK STEAMSHIP COMPANY

Submitted May 25, 1925. Decided June 23, 1925

Rates on peanuts from Norfolk to Baltimore, Philadelphia, New York, and Boston not shown to be unduly prejudicial, but certain of said rates unjust and unreasonable. Reasonable maximum rates for the future prescribed.

C. R. Marshall, for complainant.

F. W. Gwathmey, for respondents.

H. J. Wagner, for Norfolk-Portsmouth Freight Traffic Commission.

REPORT OF THE BOARD

Exceptions to the proposed report in this case were filed on behalf of each of the parties and have been given careful consideration.

The complainant is a corporation organized and existing under the laws of the State of Virginia, and is engaged in buying and selling peanuts, with its principal office at Norfolk, at which place it has warehouses and a plant for shelling and cleaning its product. By complaint seasonably filed it alleges that the respondents maintain and apply to carload and less-than-carload shipments of peanuts from Norfolk to Baltimore, Philadelphia, New York, and Boston, according as they operate, rates which are unduly prejudicial in violation of section 16 of the shipping act and unjust and unreasonable in violation of section 18 of that statute. The board is requested to effect a discontinuance of said alleged violations, to estab-

lish nonprejudicial and reasonable maximum rates for the future, and to award reparation. In regard to reparation, however, no evidence was offered at the hearing, and in the opening brief the complainant states it desires to forego its demand therefor. Rates will be stated in cents per 100 pounds.

With respect to its rates on peanuts from Norfolk to Baltimore here involved, the respondent Merchants & Miners Transportation Company questions the jurisdiction of the board on the ground that Chesapeake Bay is not a part of the high seas. In this connection it is to be observed that with regard to common carriers by water engaged in interstate transportation on regular routes from port to port, section 1 of the shipping act brings within our jurisdiction all such carriers operating on the high seas or the Great Lakes. An examination of court decisions and authorities reveals that the term high seas has been variously interpreted. In some instances it has been construed to apply only to the open ocean capable of international commercial use and in others to embrace rivers, its meaning being determined by the purpose to be accomplished by some particular statute. Bearing in mind that one of the primary purposes of the shipping act is to regulate port-to-port transportation between States, and that in describing the waters upon which such transportation should be regulated Congress went so far as to include the Great Lakes, we think it clear that Chesapeake Bay is to be regarded as "high seas" within the meaning of the act.

In support of its contention that the rates attacked are unduly prejudicial within the meaning of section 16, the complainant and the Norfolk-Portsmouth Freight Traffic Commission, intervener, set forth comparisons of said rates with those maintained and applied to Baltimore, Philadelphia, New York, and Boston from Savannah, Ga. As shown by the record, however, but one of the respondents, the Merchants & Miners Transportation Company, operates from Savannah; and of the ports of destination involved but one (Baltimore) is served from both Savannah and Norfolk by this carrier. So far as the issue of unjust prejudice is concerned, therefore, it would necessarily be confined to the rates of the Merchants & Miners Transportation Company if that issue were not concluded for another reason. According to the record, the peanuts shipped from Savannah and from Norfolk are of an entirely different variety and are used for separate and distinct purposes. While disputed by the complainant, the fact as established by the weight of the evidence adduced is that there is no competition of importance between the peanuts shipped from the two ports. Such being the case further consideration of the claim of unjust prejudice must be denied.

Upon the issue of the reasonableness of the rates on peanuts from Norfolk, comparisons of rates applicable to that commodity from

Savannah and of the relative distances involved are advanced by the complainant. These comparisons are summarized in the following table:

From—	To—			
	Baltimore	Philadelphia	New York	Boston
Norfolk:				
Carrier.....	M. & M. T. Co.	P. & N. S. S. Co.	O. D. Trans. Co.	M. & M. T. Co.
Distance.....	198 miles	299 miles	336 miles	597 miles.
Rate, carload (shelled or unshelled).	31½ cents	38 cents	38 cents	41½ cents.
Rate, less carload (shelled or unshelled).	45½ cents	58½ cents	58½ cents	62 cents.
Savannah:				
Carrier.....	M. & M. T. Co.	M. & M. T. Co.	Ocean S. S. Co.	Ocean S. S. Co.
Distance.....	715 miles	772 miles	806 miles	1,057 miles.
Rate, carload—				
Shelled.....	31 cents	31 cents	31 cents	34 cents.
Unshelled.....	37½ cents	37½ cents	37½ cents	40 cents.
Rate, less carload—				
Shelled.....	31 cents	31 cents	31 cents	34 cents.
Unshelled.....	54½ cents	54½ cents	54½ cents	58 cents.

All rates exhibited above include marine insurance. Those from Savannah also include a terminal charge of 2½ cents per 100 pounds.

As none of the respondents operates from Savannah to New York or Boston, the complainant has used the rates of the Ocean Steamship Company for comparison with the rates of the respondent Old Dominion Transportation Company and Merchants & Miners Transportation Company from Norfolk to those ports. In this connection also, as no service from Savannah is maintained by the respondent Philadelphia & Norfolk Steamship Company, the rates of the Merchants & Miners Transportation Company are used by the complainant to contest the reasonableness of the rates from Norfolk. The rates on shelled peanuts from Savannah are any quantity, and class rates are applied on the unshelled product from that port. On the other hand, the rates from Norfolk are carload and less-than-carload and are applied without regard to whether the peanuts are shelled or unshelled. Reduced to a ton-mile basis, a comparison of the approximate earnings in cents produced by the rates shown above is as follows:

From—	To—							
	Baltimore		Philadelphia		New York		Boston	
	Carload	Less than carload						
Norfolk: Shelled or unshelled.....	Cents 0. 0318	Cents 0. 0459	Cents 0. 0254	Cents 0. 0391	Cents 0. 0226	Cents 0. 0348	Cents 0. 0139	Cents 0. 0207
Savannah:								
Shelled.....	.0087	.0087	.008	.008	.0077	.0077	.0064	.0064
Unshelled.....	.0104	.015	.0097	.014	.0093	.013	.0075	.0109

From the above analysis it is seen that to the respective ports of destination the per-ton-mile earnings on shelled peanuts from Norfolk are in some cases five times as great as from Savannah and in no case less than two times as great. Even as respects unshelled peanuts upon which the higher class rates are applicable from Savannah, the per-ton-mile earnings range from 1.8 to three times as great from Norfolk as from Savannah. Aside from general statements that rates from South Atlantic ports are depressed by schooner competition under those from Norfolk and that the cost of service is greater from Norfolk than from Savannah, no evidence of moment was presented by the respondents which tends to explain the disparity in per-ton-mile earnings over and above that sanctioned by the principle that such earnings should be more for a shorter than for a longer distance. Admission was made by respondents' witness that peanuts are not affected by schooner competition, and a comparison of rates on many other commodities from Savannah and from Norfolk does not show a depression which corresponds with the difference in the rates on peanuts from those ports. As brought out by the evidence, the claim of greater cost of service from Norfolk is based on the fact of more sailings from that port than from Savannah. It would therefore seem that the greater cost referred to is gross and is dissipated by the greater tonnage which is affirmed to be carried.

Effort was made on behalf of the Merchants & Miners Transportation Company to show that its rates on peanuts from Savannah to Baltimore and Philadelphia, and from Norfolk to Baltimore are paper rates. This contention is attacked by the complainant on the grounds that it is predicated upon a period covering the first five months of 1924 only, that such period is not representative and that a check for another or a longer period of time would show a substantial movement from Norfolk. To accept as a fact that the rates from Savannah to Philadelphia are paper rates, of course, emphasizes the disparity between such rates and those of the Philadelphia & Norfolk Steamship Company from Norfolk to that port under attack. Further in this connection it is testified by witness for the Merchants & Miners Transportation Company that his company does not solicit shipments of peanuts from Norfolk to Baltimore, and by witness for the complainant that in the event the Merchants & Miners Transportation Company rates on peanuts from Norfolk to Baltimore were reduced that carrier would be preferred over a competing carrier now patronized.

In addition to its contention that the rates on peanuts from Norfolk are unreasonable by comparison with corresponding rates from Savannah, the complainant relies upon comparisons of the commodity rates on peanuts under attack with applicable class rates on that product from Norfolk, and with effective commodity rates on other articles from Norfolk.

According to their tariffs, the Southern Classification governs rates of the Merchants & Miners Transportation Company, Philadelphia & Norfolk Steamship Company, and Old Dominion Transportation Company from Norfolk to Baltimore, Philadelphia, and New York, respectively, while the Official Classification governs the rates of the Merchants & Miners Transportation Company from Norfolk to Boston. Peanuts are rated sixth class carload and fourth class less carload by the Southern Classification, and fourth class carload and third class less carload by the Official Classification. Normally, therefore, class rates as indicated would apply to shipments of peanuts from Norfolk to the designated ports of destination. All of the respondents have taken this article out of its respective class rate basis, however, and have assigned commodity rates to be charged thereon. Ordinarily such action by a carrier denotes a substantial movement of the commodity removed from the class rate status, and generally the commodity rate assigned is somewhat lower than the class rate which it displaces. In this connection it appears from the record that except to Boston the rates on peanuts from Norfolk involved in this proceeding are greatly in excess of the class rates.

Exhibits submitted on behalf of the complainant show rates in effect from Norfolk to Baltimore, Philadelphia, New York, and Boston on a large number of articles which have been removed by the respective respondents from the sixth and fourth classes of the Southern Classification and from the fourth and third classes of the Official Classification and given commodity rates as has been done in regard to peanuts. With the exception of the rates on peanuts and one other article, each of the commodity rates shown is as low or lower than the corresponding class rate. In respect to two articles only are the effective commodity and corresponding class rates the same. The average percentage relationships which the commodity rates included in these exhibits bear to the class rates from Norfolk to the ports of destination involved in this complaint, together with the respective per ton-mile earnings, are given below:

Norfolk to.....	Baltimore (M. & M. T. Co.)	Philadelphia (P. & N. S. S. Co.)	New York (O. D. Trans. Co.)	Boston (M. & M. T. Co.)
Number of articles exhibited as removed by respondents from class to commodity basis.....	27	21	18	5
Average percentage of commodity rates to class rates (except peanuts):				
Carload.....	74.2	74.9	79.3	60.2
Less carload.....	72.7	72.3	68.6	45.0
Average per-ton-mile earning (cents):				
Carload.....	.0194	.0138	.0137	.0105
Less carload.....	.0284	.0196	.018	.0094
Percentage of commodity to class rate (peanuts):				
Carload.....	121.2	138.2	131.0	79.8
Less carload.....	118.2	144.4	133.0	99.2
Per-ton-mile earning (cents):				
Carload.....	.0318	.0254	.0226	.0139
Less carload.....	.046	.0391	.0348	.0208

Classification ratings are generally the highest which a particular article should bear under normal conditions, and it may be stated as a matter of accepted principle that to assign an article a commodity rate which is higher than its applicable class rate is indicative of some unusual circumstance or circumstances incident to the transportation of that article which specially justifies the increased rate. No reason appears of record which in this relation would establish that from a transportation standpoint any exceptional conditions attend the respondents' carriage or handling of peanuts, or why, in their removal from a class to a commodity basis, they were not entitled to the same treatment as was given generally to other articles to which commodity rates were assigned.

Although the greater part of the volume of peanuts from Norfolk to the ports of destination involved in this complaint is from interior points and on through rail-and-water rates, it is shown there is a substantial and year-round movement of this commodity from Norfolk on port-to-port rates. Shipments of shelled and unshelled peanuts are made from Norfolk in about equal proportion. The value of shelled peanuts is shown to be slightly less than 10 cents per pound, and that of the unshelled product is indicated to be generally less than and in few instances more than the respective values of other enumerated commodities in regard to which the respondents' rates from Norfolk to Baltimore, Philadelphia, New York, and Boston are lower. According to their character as shelled or unshelled, they are shipped in burlap bags of uniform size, are easily and compactly stowed, and give rise to few claims for loss and damage. The evidence indicates that a bag of shelled peanuts weighs from 115 to 125 pounds and measures about 3 cubic feet, while a bag of the unshelled product weighs from 85 to 100 pounds and occupies approximately $6\frac{1}{2}$ cubic feet of space. Per ton of 2,000 pounds their bulk is, shelled, 60 to 70 cubic feet, and unshelled, 134 to 160 cubic feet, both classes measuring in excess of a measurement ton of 40 cubic feet. Manifestly, this element of bulk as between the two classes of peanuts is entitled to consideration, notwithstanding the respondents' present rates from Norfolk are applied to shelled and unshelled peanuts indifferently. Regarding their bulk as compared to that of other commodities, there is included in the record statements by the Philadelphia & Norfolk Steamship Company intended to show that per measurement ton the average earning for all commodities carried is considerably in excess of that for unshelled peanuts. In respect to shelled peanuts the record is definite that from the standpoint of bulk they compare favorably with coffee, sugar, beans, and potatoes, in regard to all but one of which lower rates

are effective via the respondents' lines from Norfolk to each of the ports of destination involved.

Except on less-than-carload shipments to Philadelphia, the rates under attack are the same or slightly lower than the rates on peanuts published and maintained by rail carriers operating from Norfolk to Baltimore, Philadelphia, New York, and Boston. These contemporaneous rail rates are on a commodity basis, and except to Baltimore reflect certain differentials under ratings published in Exceptions to the Southern and Official Classifications. In the case of the less-than-carload rate of the Philadelphia & Norfolk Steamship Company to Philadelphia, which exceeds the corresponding rail rate, witness for that carrier asserts the same is out of line, and should have been constructed on a 3-cent differential under the less-than-carload rate via rail. As thus constructed, the rate of 58½ cents complained of would be reduced to 53½ cents, and be in consistent alignment with the other rates of the respondents in respect to the rail rates. Obviously, the rates of the respondents on peanuts complained of in this proceeding were established and are maintained in close relation to the corresponding rail rates. From our review of the record as a whole we are constrained to the belief that such relation is the principal if not the only consideration which governed, and that other and pertinent factors peculiar to transportation by water were disregarded. That rail rates are not to be regarded as a criterion or measure of water rates has been affirmed by the board in two cases previously decided by it. (Wool Rates from Boston to Philadelphia, 1 U. S. S. B. 20, 21; Boston Wool Trade Assn. v. Merchants & Miners Transportation Co., 1 U. S. S. B. 24, 29.)

According due consideration to all of the factors pertinent to the issues involved and the facts and circumstances of record, the board concludes and decides that the rates complained of have not been shown to be unduly prejudicial, but that certain of said rates are, and for the future will be, unjust and unreasonable in violation of section 18 of the shipping act, to the extent that they exceed the rates shown below, which we determine and prescribe as just and reasonable maximum rates for application by the respondents to this traffic in the future:

Reasonable maximum rates on peanuts from Norfolk to Baltimore, Philadelphia, New York, and Boston

[In cents per 100 pounds]

	Norfolk to—							
	Baltimore		Philadelphia		New York		Boston	
	Carload	Less than carload	Carload	Less than carload	Carload	Less than carload	Carload	Less than carload
Peanuts, shelled, not salted, in bags, boxes, or barrels, except in glass or earthenware.....	26½	36½	33	44	33½	45	39	49
Peanuts, unshelled in bags, boxes, or barrels.....	31½	41	37½	47	38	48	41½	51½

Minimum carload weight 24,000 pounds. The above rates include marine insurance, as shown in applicable tariffs of respondents in effect at the time of hearing.

An order will be entered accordingly.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 23d day of June, 1925

Formal Complaint No. 24

American Peanut Corporation v. Merchants & Miners Transportation Company, Old Dominion Transportation Company, and Philadelphia & Norfolk 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 board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the Merchants & Miners Transportation Company, Old Dominion Transportation Company, and Philadelphia & Norfolk Steamship Company, the above-named respondents, be, and they are hereby, notified and required to cease, desist, and abstain, on or before July 15, 1925, and thereafter to abstain from publishing, demanding, or collecting the rates for transportation of peanuts from Norfolk, Va., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., herein found unjust and unreasonable.

It is further ordered, That said respondents be, and they are hereby, notified and required to establish, on or before July 15, 1925, upon one day's notice to the board and to the general public by filing and posting in accordance with section 18 of the Federal shipping act and Tariff Circular No. 1 of the board, and thereafter to maintain and apply to the transportation of peanuts here involved from Norfolk to Baltimore, Philadelphia, New York, and Boston rates not to exceed those herein prescribed as reasonable maximum rates.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect unless otherwise ordered by the board.

By the board.

[SEAL.]

(Sgd.)

ROY H. MORRILL,

Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 20

BOSTON WOOL TRADE ASSOCIATION

v.

OCEANIC STEAMSHIP COMPANY AND LUCKENBACH
STEAMSHIP COMPANY, INC.

Submitted November 13, 1925. Decided December 8, 1925

Routing of shipments via water from port of transshipment to destination, charging of same through rate thereon as for shipments moving via rail from said transshipment port, and failure to absorb wharfage, drayage, and marine insurance charges not shown to have been in violation of shipping act, as alleged. Complaint dismissed.

H. A. Davis for complainant.

Arthur J. Santry and *Irving H. Frank* for Oceanic Steamship Company.

Frank Lyon for Luckenbach Steamship Company, Inc.

REPORT OF THE BOARD

Examiner's proposed report in substantial conformity with the following was served upon the parties in accordance with the board's Rules of Practice. No exceptions thereto were filed.

The complainant is a voluntary association of wool dealers with headquarters at Boston, Mass. By complaint seasonably filed it alleges on behalf of Brown & Howe, one of its members, that the respondent carriers diverted certain shipments via a route other than that established by custom in the particular trade, exacted rates thereon in excess of those applicable via the route transported, and made necessary the payment of certain wharfage and other charges, thereby subjecting complainant's member to undue prejudice, to the payment of unjustly discriminatory rates and charges, to an unjust and unreasonable practice, and to the payment of unjust and unreasonable rates and charges, in violation of sections 16, 17, and 18 of the shipping act. The board is requested to effect a discontinuance of said alleged violations and to award reparation.

In regard to that part of the issue raised in respect to the justness and reasonableness of the rates and charges under section 18 of

the statute, it is observed that in the instant case both of the parties here respondent were engaged in through transportation from a foreign country to a destination in the United States. The fact that incidentally a part of this through transportation was between ports in the United States did not change the character of that portion from foreign to interstate. As section 18 of the statute concerns carriers engaged in interstate commerce exclusively, its inhibitions regarding unjust and unreasonable rates and charges have no application to this proceeding.

The complaint in this case is in connection with three shipments of wool in bond from Sydney, Australia, to Boston, Mass., claimed to have been arbitrarily diverted by the respondents at San Francisco from overland rail movements to carriage by water via the Panama Canal. As established by the evidence of record, these shipments were transported from Australia in vessels of the Oceanic Steamship Company to San Francisco, where they were transhipped and carried to destination by the Luckenbach Steamship Company. The prepaid rate of \$2.55½ per 100 pounds covering this through service via San Francisco was the same as that charged for like shipments by other and competing water carriers operating direct from Australia to Boston. Out of this rate the Oceanic Steamship Company absorbed the Luckenbach Steamship Company rate of 90 cents per 100 pounds. Had the shipments moved via rail from San Francisco, this absorption would have been \$1.25 per 100 pounds, or a difference on the three shipments of \$1,159.32, which amount is requested by the complainant as reparation for the alleged exaction of rates in excess of those applicable via the route transported. Incident to the movement of the shipments via water from San Francisco were charges for additional marine insurance amounting to \$591.72, wharfage charges at Boston amounting to \$72.10, and charges for drayage at Boston to the complainant's warehouse amounting to \$257.50, all of which sums are shown to have been paid by the complainant's member and are prayed for as an alternative award of reparation. According to the evidence, had the wool been transported overland by rail the shipments would have been delivered upon railroad siding at complainant's warehouse, thus rendering wharfage and drayage unnecessary, and of course no marine insurance covering the movement from San Francisco to Boston would have been required.

The bills of lading covering the three shipments, as shown by copies thereof introduced in evidence by the complainant, contain no mention of routing beyond San Francisco. On this point considerable of the complainant's evidence is directed toward the contention that with respect to Australian wool destined Boston via

San Francisco a custom prevailed in the trade of forwarding via rail from San Francisco, the existence of which custom is relied upon by the complainant as the basis for the charge of unlawfulness under the shipping act of the respondents' action in transporting via water from San Francisco rather than via rail. Other evidence introduced by the complainant, however, is directed toward showing that in regard to the three shipments here involved there existed an oral agreement made prior to the execution of the bills of lading by virtue of which they were to be forwarded via water from San Francisco. According to the complainant's witness furnishing this evidence, he was the representative of the consignee Brown & Howe who purchased the wool in Australia and had authority to arrange for its transportation. As such representative, it is affirmed, he orally agreed with the Oceanic Steamship Company's representative in Australia that the routing should be via the Luckenbach Steamship Company from San Francisco, with the provision, however, that the net cost to his principals, for delivery in their Boston warehouse, should not be more than if the wool moved from San Francisco overland. The fact of such agreement having been entered into, and its consequence, are questioned by the respondents. Manifestly, the effect of the complainant's own evidence in this regard is to negative its claim that the respondents' action in routing the shipments via water from San Francisco was an arbitrary diversion violative of the shipping act.

In regard to its allegation that the rate charged was in excess of that applicable via the route transported and unlawful under the shipping act, the complainant relies upon the fact that out of the through rate the Oceanic Steamship Company absorbed less for the movement via the canal than would have been required had the shipments moved overland. It is not seen that this circumstance supports the allegation, since the rate charged was a through rate and not a combination rate composed of the sum of local factors.

Wharfage charges assessed against the shipments for pier use at Boston were collected by the Luckenbach Steamship Company from Brown & Howe and remitted to State authorities. These charges are shown to have been in accordance with a fixed local tariff covering Boston wharfage rates generally, in which the Commonwealth of Massachusetts, as owner of the pier at which the shipments were unloaded, was a participating party. Drayage charges were collected direct from Brown & Howe by teamsters pursuant to arrangement with which the respondents had no connection. Marine insurance covering the movement from Sydney to Boston is shown to have been placed upon the shipments involved by Brown & Howe

under a blanket policy with the insurers. The premiums thereon were higher than would have been charged had the wool moved overland from San Francisco, as, for example, the rate of insurance paid per \$100 valuation was 80 cents, whereas evidence submitted by the complainant establishes that a rate of 45 cents was applicable from Sydney to San Francisco at the time the shipments were transported. On a number of shipments of wool consigned to Brown & Howe and carried by direct-line steamers from Australia to Boston during the period covered by this complaint the premium charged is shown to have been 62½ cents. Similarly as in the case of the three shipments here in controversy, the marine insurance on these direct-line shipments, as well as wharfage and drayage charges, were not absorbed by the carriers but were paid by Brown & Howe.

Examination of the testimony and exhibits of record indicates that the service which the respondents held themselves out to perform did not include wharfage, drayage, or marine insurance as here involved, and no facts are advanced which tend to show that under the statute the practice of the respondents in this regard was unjust or unreasonable. Furthermore, in respect to the undue prejudice and unjust discrimination alleged, the record evinces no facts that the treatment extended the complainant's member either with reference to these wharfage, drayage, and marine insurance charges or the rates exacted for the transportation service performed was in any manner different from that accorded to Boston consignees generally. In brief, a review of the record shows that the evidence presented by the complainant in this case and conceived by it to establish the unlawfulness of the routing, rate, and charges under sections 16 and 17 of the shipping act is directly affected by or intimately involves the disputed oral agreement referred to by complainant's witness as having been entered into by the parties in interest. Whether such an agreement was entered into, its terms, and other matters looking to a determination of the contractual relations and rights of the parties pursuant to it is clearly not within the jurisdiction of the board to consider.

According due consideration to all the facts and circumstances of record, the board concludes and decides that the complainant's member is not shown to have been subjected to undue prejudice, to the payment of unjustly discriminatory rates and charges, to an unjust and unreasonable practice, or to the payment of unjust and unreasonable rates and charges in violation of sections 16, 17, and 18 of the shipping act as alleged.

The complaint will therefore be dismissed.

An order will be entered accordingly.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washigton, D. C., on the 8th day of December, 1925

Formal Complaint Docket No. 20

Boston Wool Trade Association v. Oceanic Steamship Company and 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 board having, on the date hereof, made and filed a report containing its conclusion and decision thereon, which said report is hereby referred to and made a part hereof:

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

By the board.

[SEAL.]

(Sgd.)

ROY H. MORRILL,

Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 24

AMERICAN PEANUT CORPORATION

v.

MERCHANTS & MINERS TRANSPORTATION COMPANY,
OLD DOMINION TRANSPORTATION COMPANY, AND
PHILADELPHIA & NORFOLK STEAMSHIP COMPANY

Submitted October 7, 1925. Decided December 18, 1925

Upon argument original report (1 U. S. S. B. 78) affirmed and proceeding, as reopened upon petition of Merchants & Miners Transportation Company for modification of said report, dismissed.

F. W. Gwathmey for Merchants & Miners Transportation Company.

C. R. Marshall for complainant.

REPORT OF THE BOARD

In our original report in the instant case (U. S. Shipping Board Reports, vol. 1, p. 78), specified rates in lieu of those determined to be unjust and unreasonable were prescribed and ordered to be established and observed in the future by the respondent carriers in connection with their respective services from Norfolk to Boston, New York, Philadelphia, and Baltimore. Such rate changes thereby directed were made by all of the respondents except the Merchants & Miners Transportation Company in regard to its service from Norfolk to Baltimore. Upon petition of that carrier the board reopened this proceeding for argument upon the question raised as to the board's jurisdiction, under the shipping act, over interstate port-to-port carriers on regular routes on Chesapeake Bay. This jurisdictional question was first presented in exceptions filed on behalf of the Merchants & Miners Transportation Company to the examiner's proposed report, and received attention by the board in its original report in this case as follows:

With respect to its rates on peanuts from Norfolk to Baltimore here involved, the respondent Merchants & Miners Transportation Company questions

the jurisdiction of the board on the ground that Chesapeake Bay is not a part of the high seas. In this connection it is to be observed that with regard to common carriers by water engaged in interstate transportation on regular routes from port to port, section 1 of the shipping act brings within our jurisdiction all such carriers operating on the high seas or the Great Lakes. An examination of court decisions and authorities reveals that the term high seas has been variously interpreted. In some instances it has been construed to apply only to the open ocean capable of international commercial use and in others to embrace rivers, its meaning being determined by the purpose to be accomplished by some particular statute. Bearing in mind that one of the primary purposes of the shipping act is to regulate port-to-port transportation between States, and that in describing the waters upon which such transportation should be regulated Congress went so far as to include the Great Lakes, we think it clear that Chesapeake Bay is to be regarded as "high seas" within the meaning of the act.

At the argument a number of court decisions and authorities were referred to by petitioner's counsel in support of the position that the term "high seas" has had, from time immemorial in this country and England, a well defined and established meaning contrary to that which we have given it. Among the decisions reviewed was *United States v. Grush*, 26 Fed. Cas. 48, wherein Judge Story in 1829 observed that to use the term was—

to express the open unenclosed ocean, or that portion of the sea, which is without the *fauces terrae* on the seacoast, in contradistinction to that which is surrounded or enclosed between narrow headlands or promontories, and *Waring v. Clark*, 5 How. 440 (1847), wherein of the term "high seas" it was said:

It has frequently been adjudicated in the English common-law courts, since the restraining statutes of Richard II and Henry IV were passed, that high seas mean that portion of the sea which washes the open coast.

The language of the court in *Ex Parte Byers*, 32 Fed. 404, that "These words (high seas) have been employed from time immemorial to designate the ocean below low-water mark, and have rarely, if ever, been applied to interior or land-locked waters of any description," was likewise urged upon us.

Reliance is also placed by petitioner upon the definition of the term "high seas" contained in Benedict's Admiralty (fourth edition, sec. 160) that—

The high sea, the open sea, are phrases used to distinguish the expanse and mass of any great body of water, from its margin or coast, its harbors, bays, creeks, inlets. High seas, in the plural number, more properly means the oceanic mass of waters, which is composed of many subdivisions of seas and oceans.

These and other decisions and definitions advanced on behalf of the petitioner have had our painstaking consideration. Upon the question before us, however, we are directed to the later and more

convincing authority of the United States Supreme Court decision rendered in 1893 and entitled *United States v. Rodgers*, 150 U. S. 249, in which is discussed at length the character of the Great Lakes as high seas. In this decision practically all of the cases and text-writers relied upon by the petitioner receive the attention of the court, which in its discussion of the point at issue expresses itself in part as follows:

If there were no seas other than the ocean, the term "high seas" would be limited to the open, unenclosed waters of the ocean. But as there are other seas besides the ocean, there must be high seas other than those of the ocean. * * * We prefer to use it in its true sense, as applicable to the open, unenclosed waters of all seas, than to adhere to the common meaning of the term two centuries ago, when it was generally limited to the open waters of the ocean and of seas surrounding Great Britain, the freedom of which was then the principal subject of discussion.

In its further treatment of the matter before it the court remarks:

The Great Lakes possess every essential characteristic of seas. They are of large extent in length and breadth; they are navigable the whole distance in either direction by the largest vessels known to commerce; objects are not distinguishable from the opposite shores; they separate, in many instances, States, and in some instances constitute the boundary between independent nations; and their waters, after passing long distances, debouch into the ocean. The fact that their waters are fresh and not subject to the tides does not affect their essential character as seas.

And in addition we find embodied in that decision the statement that—

Bodies of water of an extent which can not be measured by the unaided vision, and which are navigable at all times in all directions, and border on different nations or States or people, and find their outlet in the ocean, as in the present case, are seas in fact, however they may be designated.

Chesapeake Bay is approximately 200 miles long and commonly attains a width of 40 miles. At its ocean outlet between Cape Charles and Cape Henry it is 12 miles from shore to shore, across which distance objects are not discernible to the naked eye. Along its borders lie the States of Maryland and Virginia, and over its surface are navigated vessels of every burden and draft to one of the important North Atlantic ports of the United States. That these attributes fully meet the requirements of the definite language used in the decision referred to and establish its character as high seas we think unmistakable.

Our consideration has also been given to the contention advanced on behalf of the petitioner that as Chesapeake Bay is entirely within the territorial jurisdiction of Maryland and Virginia, it is not and can not be high seas. This is likewise the contention of one of the dissenting justices in *United States v. Rodgers (supra)*, his objection being couched in the words, "The difficulty of applying

the term 'high seas' to the lakes arises not from the fact that they are not large enough, that the commerce which vexes their waters is not of sufficient importance, but from the fact that they are within the local jurisdiction of the States bordering upon them." He then specifies the boundary lines between the United States and Canada, and in regard to Lake Michigan, those between the States of Illinois, Wisconsin, and Michigan. The fact that the Great Lakes were held by this decision to be high seas necessarily disposes of the contention that State territorial waters can not be such. A further judicial recognition that waters within the borders of a State may be high seas is afforded by *United States v. Newark Meadows Improvement Co.*, 173 Fed. 426 (1909), wherein it was determined that notwithstanding the place of an offense was on territorial waters of the State of New Jersey, yet that place was high seas. The place of offense in that case was also stated to be within New York Harbor, as defined by the Treasury Department under legislation designed to provide information to navigators of the location where inland as distinguished from international rules of navigation become applicable.

Upon the additional point stressed by counsel that Chesapeake Bay is not high seas for the reason that the States of Maryland and Virginia exercise pilotage jurisdiction thereover, we are mindful of a number of Supreme Court decisions which have consistently held to the effect that the States of the Union may legislate and exercise certain regulatory powers over interstate affairs in the absence of Federal legislation in relation thereto. On this point it suffices to note that as late as 211 U. S. 621, the court observes with approval that—

In *Cooley v. Board of Port Wardens of Philadelphia*, 12 Howard, 292, it was held that a regulation of pilots and pilotage was a regulation of commerce within the grant of the power to Congress, but further that "the mere grant of such a power to Congress did not imply a prohibition on the States to exercise the same power; that it is not the mere existence of such power, but its exercise by Congress, which may be incompatible with the exercise of the same power by the States, and that the States may legislate in the absence of congressional legislation."

Manifestly the pilotage supervision exercised by the States of Maryland and Virginia over carriers engaged in interstate commerce on Chesapeake Bay is sanctioned by this principle. It appears equally manifest that in the matter of regulation of the rates, fares, and practices of independent interstate port-to-port carriers engaged in regular service on Chesapeake Bay the Congress has seen fit to exercise through this board its undoubted privilege under the Constitution.

Supplementing its contentions predicated upon judicial and academic authority, the petitioner in argument lays stress upon senatorial discussion regarding the insertion of the phrase "on the high seas" in section 1 of the shipping act, 1916, and urges that the legislative intent is shown thereby to have been to indentify Chesapeake Bay with inland waters and to exclude all carriers operating on such waters from the jurisdiction of the board. Although it may be here suggested that such discussions are perhaps not the approved source of information from which to determine the meaning of the language of the statute,¹ yet in view of the importance of our conclusion in this case we have felt it desirable to review the legislative expressions having reference to the point involved.

As originally passed by the House and as delivered to the Senate section 1 defined a carrier contemplated to be subject to our authority in the following language:

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property between one State, Territory, District, or possession of the United States and another, or between places in the same Territory, District, or possession.

It is seen that this definition would bring within the purview of the act all interstate carriers by water, whether operating upon the high seas, the Great Lakes, or upon rivers. The Commerce Committee of the Senate amended this definition, however, to read:

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.

In this latter form it became and is now the law. In commenting upon the insertion of the phrase "on the high seas or the Great Lakes," various remarks were made upon the floor of the Senate, as recorded in the Congressional Record,² which reflect the thoughts of the individual members of the Senate Committee on Commerce in charge of the bill. In justice to the position of the petitioning carrier, it may be observed that there is included in these remarks a statement which lends support to its belief that the amendment was intended to exclude such bodies of water as Chesapeake Bay. It is the assertion of one of the members that "If the committee amendment is agreed to, there goes out of the bill any power or authority or jurisdiction of the Shipping Board over the inland waterways, the rivers, and the bays that are inland."

¹ U. S. v. Freight Ass'n., 136 U. S. 317.

² 64th Cong., 1st sess., vol. 53, pts. 12 and 13, pp. 12863, 12793-12800.

There appear other statements by members of the Senate Committee on Commerce upon the point involved, however, which we believe outweigh this and other expressions urged on behalf of the petitioner. For example, the pages of the Congressional Record indicated show declarations by committee members as follows:

"There did not appear either before the Senate committee or in the hearings before the Merchant Marine and Fisheries Committee of the House that there was any particular need of regulating these carriers on the rivers of the country, and it was thought wise by the committee that we should for the present exclude or drop out of the bill this reference to inland waterways, and confine the regulatory features to commerce on the high seas and on the Great Lakes."

"* * * the commerce on the rivers is comparatively small. It is struggling. It is more or less undeveloped as yet. We felt that there was no call, there was no real reason, for giving any board the jurisdiction to require the fixing of maximum rates, and that sort of thing, on these rivers."

"There was a great demand which came from citizens of * * * river towns to give them immunity from the provisions of this paragraph, and it was in order to give them immunity, in order to relieve them from the rules governing this class of shipping, that that term 'on the high seas' was injected."

These and other statements of Senate committee members, we are convinced, identify the insertion of the phrase "on the high seas" in section 1 of our statute with an intent to exclude solely river transportation from our jurisdiction. Further, and we think final, persuasion that the legislative body may be considered to have designed the phrase "on the high seas" to function for no other purpose than to exclude river transportation is provided by the statements of the Senate sponsor of the shipping bill. When the amendment of section 1 of his bill by the injection of the phrase "on the high seas or the Great Lakes" was made, and in reference to a further proposal that from this phrase there be eliminated the words "or the Great Lakes," he remarked:

Before that amendment was put in, the bill provided for the regulation of rates, the regulation of domestic commerce, on the Great Lakes and on the high seas and on the rivers. By the insertion of this amendment the regulation of domestic commerce, so far as the rivers of the country are concerned, was eliminated.

The Senator was asked: "The bill as it came to the Senate did not include inland transportation on the rivers, did it?" To which his reply was: "Why, it included all domestic commerce from a port of one State to a port of another State, whether by river, by the Great Lakes, or by the high seas." To this the inquiry was made, "How has the river transportation been eliminated?" To which the reply was, "By limiting it to the Great Lakes and the ocean."

Other contentions developed on behalf of the carrier and conceived to support its position in regard to the jurisdictional question involved have been given careful attention.

After consideration of the record of argument in this case we conclude and decide that our original report herein should be affirmed, and that this proceeding, as reopened upon the petition of the Merchants & Miners Transportation Company for modification of such original report, should be dismissed.

An order will be entered accordingly.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held
at its office in Washington, D. C., on the 18th day of December
1925

Formal Complaint No. 24

American Peanut Corporation *v.* Merchants & Miners Transportation Company,
Old Dominion Transportation Company, and Philadelphia & Norfolk Steam-
ship Company

Whereas the above-entitled proceeding having been reopened for
argument upon petition of the respondent Merchants & Miners Trans-
portation Company, and said argument having been duly heard and
full investigation of the matters and things involved having been
had; and

Whereas the board having, on the date hereof, made and filed a
report containing its conclusion and decision thereon, which said re-
port is hereby referred to and made a part hereof; now, therefore, it is

Ordered, That the original report in this case be, and it is hereby,
affirmed, and that this proceeding, as reopened upon said petition of
the Merchants & Miners Transportation Company, be, and it is hereby,
dismissed.

By the board.

[SEAL.]

(Sgd.)

ROY H. MORRILL,
Secretary.

DOCKET No. 13

AMERICAN TOBACCO COMPANY

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH
LINE)

Submitted September 30, 1925. Decided December 29, 1925

Upon further hearing reparation awarded on shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York on account of injury due to unjustly discriminatory charges. Original report, 1 U. S. S. B. 53.

Junius Parker, Clinton Robb, and Jno. H. Holmes for complainant.

Jos. P. Nolan for respondent.

SUPPLEMENTAL REPORT OF THE BOARD

Exceptions filed by the parties to the proposed report in this case have been carefully considered.

This proceeding involves collect shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York, moved during the period April 7, 1919, to January 3, 1921, and consigned to the complainant American Tobacco Company. In connection with these shipments the respondent French Line exacted charges for loading and carriage calculated upon a fixed basis of 5 francs to \$1, while in regard to prepaid shipments of identical commodities carried for other of its patrons from Havre and Bordeaux to New York during the same period and in many instances upon the same vessel, the respondent accepted payment of such transportation charges in francs at the current rates of exchange ranging from 5.88 to 17.07½ francs to \$1.

Under authority of section 22 of the shipping act, sworn complaint alleging violations of that statute by the carrier in connection with the higher charges thus exacted was filed by the American Tobacco Company, and hearing was duly conducted by the board in accordance with its rules of practice. In its report in this case, rendered on July 17, 1923 (1 U. S. S. B. 53), the board decided from the evidence submitted by the parties at such hearing that the charges complained of were unduly prejudicial, unduly preferential,

and unjustly discriminatory, in violation of sections 16 and 17 of the shipping act, to the extent which they exceeded prepaid charges on like shipments from and to the same ports and additional incidental costs, if any, which the carrier was compelled to absorb by reason of transporting collect. In regard to reparation contended for, however, it was decided that the record did not afford a basis for determining the extent, if any, to which the complainant had been injured, and the case was assigned for further hearing in respect to any such injury sustained and the amount of reparation to which the complainant might be entitled by reason thereof. Following extensions of time granted at the request of the parties, supplemental hearing was accordingly conducted on May 12, 1925, and the present report and decision are confined to a consideration of the issues whether in fact the complainant was injured within the meaning of section 22 of the shipping act by the payment of the charges found to have been unlawful, and, if injured, the pecuniary amount to which it is entitled as an award of reparation.

Much of the testimony of the complainant's witnesses examined at the supplemental hearing was addressed in detail to the several kinds of cigarette papers in books purchased and sold during 1919, 1920, and 1921 by the complainant and other tobacco companies with which it competed, and to the various brands of cigarettes in the manufacture of which the cigarette paper in bobbins was used. The facts of record as provided by the evidence of these witnesses are that during this period all of such cigarette papers in books were imported from France, and, with the exception of some Italian and Japanese paper imported by one of the companies, all paper in bobbins used in the manufacture of cigarettes by both the complainant and such other tobacco companies likewise came from France and was purchased direct or through New York representatives of French manufacturers. Each of the companies (American Tobacco Company, Liggett & Myers Tobacco Company, R. J. Reynolds Tobacco Company, Pierre Lorillard Company, Surbrug Company, and others) had upon the same market its particular cigarette papers or cigarettes which corresponded in general character and quality to respective papers and cigarettes of the other companies. While for short intervals the price of one brand or another was higher or lower than a corresponding brand or another company, it is shown that throughout 1919, 1920, and 1921 the prices obtained by the several companies for their respective products here involved were practically the same. Considerable evidence is of record evincing that at no time was the complainant able to recoup any part of the greater charges paid by it by increasing the prices of its papers or cigarettes.

Testimony was also presented on behalf of the complainant regarding cost of production, method of computing cost items, and other matters having bearing or conceived to have pertinence in a decision of the issues involved.

Although the respondent was represented at the supplemental hearing by counsel, who cross-examined the complainant's witnesses at length, no witnesses were presented or testimony offered on its behalf, and nothing was advanced by it tending to show the fact or amount of any additional cost incident to the carriage of the complainant's shipments collect rather than prepaid.

Upon all the facts in this case it is undeniable that the complainant suffered injury within the meaning of section 22 of the statute by reason of the unlawful charges paid. As upon the record the injury thus sustained is fairly comparable to the difference between the transportation charges exacted of the complainant and what they would have been had its shipments been accorded charges based on the current rates of exchange similarly as were those of its competitors, together with interest, that difference and interest constitute the sum to which the complainant is entitled as an award of reparation. The principal of this sum is properly to be calculated upon the basis of the rate of exchange on the dates of the complainant's bills of lading, rather than, as contended by the complainant throughout the proceeding, upon the dates on which the charges were approved by it for payment. As in connection with each of the complainant's shipments the interim between the bill of lading date and the date payment of the charges was approved was one of decrease in the rate of exchange, the principal amount of reparation to which the complainant is entitled is less than the \$53,840 prayed for.

From a consideration of all the facts, circumstances, and conditions of record the board finds that during the period April 7, 1919, to January 3, 1921, the complainant American Tobacco Company made 279 shipments of cigarette papers in books and cigarette paper in bobbins, as set forth and described in exhibits of record in this proceeding, on which it paid and bore transportation charges in the sum of \$99,755.47; that said charges on said shipments were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the shipping act, as decided by the original report of the board herein, to the extent which they exceeded \$51,898.49; that said complainant has been injured by the respondent Compagnie Generale Transatlantique within the meaning of section 22 of that statute in the sum of

1 U. S. S. B.

\$47,856.98 and interest thereon at the rate of 6 per cent per annum from the respective dates of payment of the transportation charges involved as specified in column 24 of complainant's amended Exhibit A, and that the complainant American Tobacco Company is entitled to an award of reparation in the amount of said sum and interest.

An order will be entered accordingly.

1 U. S. S. R.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 29th day of December, 1925

Formal Complaint Docket No. 13

American Tobacco Company v. Compagnie Generale Transatlantique (French Line)

Whereas on July 17, 1923, the board entered its report in the above-styled proceeding, among other things assigning for further hearing the issues as to the fact of injury sustained by complainant and the amount of reparation, if any, to which complainant might be entitled by reason of any such injury; and

It appearing that such further hearing and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed its report thereon containing its conclusions, decision, and findings of fact, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondent Compagnie Generale Transatlantique pay unto the complainant American Tobacco Company on or before ninety days from date hereof, as reparation on account of unlawful transportation charges exacted, the sum of \$47,856.98 with interest thereon at the rate of six per cent per annum computed from the respective dates of payment by complainant of said charges as specified in column numbered 24 of amended Exhibit A of record herein.

By the board.

[SEAL]

(Sgd.)

ROY H. MORRILL,
Secretary.

UNITED STATES SHIPPING BOARD

FORMAL DOCKET No. 28

EAGLE-OTTAWA LEATHER COMPANY

v.

GOODRICH TRANSIT COMPANY

Submitted August 12, 1926. Decided October 19, 1926

Less-than-carload rates on leather from Muskegon and Grand Haven, Mich., to Chicago, Ill., unjust and unreasonable, but not shown to be unduly prejudicial. Just and reasonable maximum rates prescribed for the future and reparation awarded.

R. A. Black, for complainant.

A. L. Nash, for respondent.

REPORT OF THE BOARD

Exceptions to the examiner's proposed report in this case were filed on behalf of each of the parties and have been given consideration.

The complainant is an Illinois corporation engaged in the manufacture of leather at Whitehall and Grand Haven, Mich., with general offices at Chicago, Ill. The respondent is a New Jersey corporation engaged as a common carrier by water in the transportation of persons and property on regular routes between ports in the States of Wisconsin, Michigan, and Illinois, and as such is subject to the shipping act, 1916.

By complaint filed under authority of section 22 of the shipping act, the leather company alleges the respondent carrier's rates on less-than-carload shipments of leather from Montague, Muskegon, and Grand Haven, Mich., to Chicago, Ill., subject it to an undue and unreasonable prejudice and disadvantage in violation of section 16 of that statute, and that said rates were and are unjust and unreasonable in violation of section 18 thereof. The prayer of the complaint is that the board effect a discontinuance of said alleged violations, prescribe nonprejudicial and reasonable rates for the future, and award reparation on shipments moving on and after January 1, 1924. The complaint was modified at the hearing, however, to exclude from

consideration the lawfulness of the rate on leather from Montague, upon a showing that practically none of the complainant's shipments moves from that port. The specific rates assailed are as follows: From Muskegon, 64½ cents to May 20, 1924, 61½ cents to September 10, 1925, and 60 cents thereafter; from Grand Haven, 61½ cents to September 10, 1925, and 60 cents thereafter.

Case, bag, strap, insole, upholstery, and shoe leather are manufactured by the complainant at its tanneries at Whitehall and Grand Haven, and shipped, chiefly in bundles, wrapped in sulphite paper or veneer board, to Chicago for distribution and sale. The leather produced at the Whitehall plant is trucked by the complainant to Muskegon. In all instances the freight rate is paid by the complainant and absorbed in the price of the leather sold by it upon the Chicago market in competition with leather manufactured in that city by other companies. No tanneries other than those of the complainant are located at or near Muskegon and Grand Haven, although plants of other producers manufacturing leather are located at Sault Ste. Marie, and across Lake Michigan at Sheboygan and Milwaukee. The Sheboygan and Milwaukee tanneries are served by the respondent at less-than-carload rates to Chicago of 33½ and 31½ (later 27) cents per 100 pounds, respectively, as against its less-than-carload rates of 60 cents per 100 pounds from Muskegon and Grand Haven. Regarding the issue of undue and unreasonable prejudice and disadvantage, the evidence of the complainant's witnesses as to whether the Sheboygan and Milwaukee tanneries compete with the complainant is in direct conflict. Upon the record, therefore, the allegation of the complaint as respects section 16 of the statute is not sustained.

The rates from Muskegon and Grand Haven complained of are class rates applied upon leather NOIBN, class 2 of the official classification. The carrier has accorded commodity rates to similar shipments from Sheboygan and Milwaukee, as it has also done with respect to shipments of leather of the character indicated from Manitowoc and from Holland. Comparison of the respondent's rates from these latter ports with those from Muskegon and Grand Haven has bearing upon the reasonableness of the latter and is entitled to consideration. In tabular form, the respondent's mileage, rates per 100 pounds, and per ton-mile earnings on less-than-carload shipments of leather NOIBN from the several ports involved to Chicago are shown below. All of such rates include marine insurance.

From—	Mileage	Rate	Earning per ton-mile
Muskegon.....	125	<i>Cents</i> 60	<i>Cents</i> 9.6
Grand Haven.....	110	60	10.9
Holland.....	95	45	9.4
Manitowoc.....	156	38½	4.3
Sheboygan.....	132	33½	5.1
Milwaukee.....	85	31½	7.4
		27	6.4

¹ Since March 22, 1926.

It is noted from the above that for the service of 125 miles from Muskegon the respondent charges a rate nearly twice that applicable for the 156-mile service from Manitowoc. It also charges twice as much for the 110-mile service from Grand Haven as from Milwaukee, although the distance from Milwaukee is but 25 miles less. Referring to the comparison of earnings per ton-mile, it appears that from Muskegon and Grand Haven the respondent receives approximately 80 per cent more than from Sheboygan and Milwaukee. Noticeable also is the fact of the earnings of 9.6 and 10.9 cents from Muskegon and Grand Haven, respectively, and the earning of 9.4 cents from Holland. Ordinarily, per ton-mile earnings from properly aligned rates decrease as distance increases.

While often unimportant, distance is nevertheless a definite factor for consideration in determining the reasonableness of water rates, and from our study of the above tabular comparison as a whole, we think the disparities thereby shown strongly support the complainant's allegation that the rates from Muskegon and Grand Haven are unreasonable. Of pertinence in this connection also is the fact that as compared with the 60-cent rates from Muskegon and Grand Haven under attack, the respondent maintains carload rates of 35½ cents from those ports. Bearing further upon their questioned reasonableness is the fact, as shown by tariffs on file and of record with the board, that from January 1 to November 1, 1925, the respondent maintained a less-than-carload rate of 58½ cents on leather from Holland to Grand Haven by truck (a distance of approximately 20 miles) and thence to Chicago by boat. This service was revived at a rate of 57½ cents on January 2, 1926. Since December 17, 1924, the respondent has also maintained a proportional rate of 51 cents from Grand Haven and Muskegon to Chicago applicable to leather from inland points when delivered to it by truck. No reason is given to explain why since December 17, 1924, the complainant has not availed itself on this 51-cent rate on shipments trucked by it from Whitehall.

Stress is laid by the complainant upon the volume of movement of its product from Muskegon and Grand Haven to Chicago over the

respondent's line, it being exhibited that during the period January, 1924, to September, 1925, a total of 716 shipments aggregating 1,153,397 pounds went forward from Whitehall via Muskegon, and 2,102 shipments aggregating 1,257,288 pounds were carried from Grand Haven. This volume of leather is shown to be greatly in excess of that from Manitowoc, Sheboygan, or Milwaukee, although commodity rates on leather are applied by the respondent from each of the latter ports. As to general traffic, however, the volume moving from Sheboygan and Milwaukee is asserted by the carrier to be approximately twice that moving from Muskegon and Grand Haven. No evidence was submitted in any way indicating that any considerable amount of leather is carried from Holland on the respondent's 45-cent commodity rate.

The evidence shows that the leather comprising most of the complainant's shipments averages in value around \$125 per roll. These rolls weigh from 100 to 110 pounds and measure about 5 cubic feet. Other finer and more valuable grades of leather, such as that used for upholstery, are occasionally shipped. During the period covered by the complaint no claims for loss or damage to any of the shipments moved were made, indicating alike their nonsusceptibility to pilferage and injury, and the care in handling exercised by the carrier.

Other than general statements, nothing was presented by either party bearing upon a comparison from a transportation standpoint of shipments of leather with other commodities. Specific contention was made by the complainant that the value of leather NOIBN is lower than that of other commodities carried at the second-class rate. From a careful examination of second-class official classification articles in less-than-carload quantities, we are of the opinion that this contention is untenable. Examination also shows, however, that as to factors other than value, such as bulk, weight, risk, and handling adaptability, a number of second and lower classed articles demonstrate that leather NOIBN is clearly classified to the highest rating.

Throughout the hearing effort on behalf of the respondent carrier was addressed to the position that the rates from Muskegon and Grand Haven are in all respects reasonable in view of value of service and cost of service.

The Sheboygan-Milwaukee rates of 33½ and 31½ cents, respectively, are stated to have been established on a commodity basis in an effort to obtain leather shipments from those points to Chicago which ordinarily move via rail. It was testified by the carrier that these commodity rates are unremunerative and have not drawn any considerable amount of traffic. Notwithstanding this fact, they are

shown to have been maintained since 1923. Moreover, since the beginning of this proceeding, the carrier has still further reduced the rate from Milwaukee to 27 cents. Rail competition on leather also exists against the respondent's service from Muskegon and Grand Haven at rates of 63½ and 60½ cents, respectively, but is less acute because of the rail company's slower deliveries on less-than-carload shipments. Of material advantage to the complainant in this respect is the fact that nearly two days are required for the rail service, whereas the respondent ordinarily makes delivery in less than one day's time. Such expedition is of course an element of weight bearing upon value of service.

The carrier's cost of operation is asserted to be materially higher along the east than along the west shore of Lake Michigan, due principally to ice conditions with which its vessels have to combat. Vessels used in the east-shore service between Muskegon, Grand Haven, and Chicago are affirmed to represent a larger investment than those engaged in service along the opposite shore and to warrant the 60-cent rates under attack. These rates, it is asserted, barely cover the cost of service in connection with the complainant's shipments. The board of course recognizes known conditions encountered such as that referred to regarding ice, and attaches every possible weight to the conclusion concerning cost in respect to the one particular commodity involved. The probative value of the latter is necessarily impaired, however, by the absence of facts upon which it is based. Furthermore, the rate of 45 cents on leather from the eastern-shore port of Holland is not shown to be subject to dissimilar cost figures and tends directly to bring the reasonableness of the 60-cent rates into question. Nothing was presented of record as to comparative terminal costs at any of the ports involved.

Considerable of the carrier's evidence relates to its earnings for the years 1924 and 1925, during which two-year period a loss was sustained on its operations as a whole, including interest charge, of \$56,090.50. For 1924 the carrier shows a loss of \$52,346.38. The loss for 1925 was \$3,744.12, or a reduction in loss of \$48,602.26 during that year over 1924.

Of the four "runs" maintained by the respondent, three (Whitehall-Mackinac, Green Bay-Washington Island, and Milwaukee) show a loss for 1924. The fourth, or Muskegon run, included in which is the service from Muskegon and Grand Haven involved in this proceeding, shows a profit for 1924 of \$135,868.90, of which \$43,206.23 was derived from freight. The reproduction cost of the two vessels of the respondent engaged in service on the Muskegon run and used upon the record as the carrier's capital investment in that service is \$1,800,000. This profit of \$135,868.90 for 1924, it is

urged, is less than a fair return upon the \$1,800,000 investment. It will be observed that it is 7½ per cent. Moreover, the reduction in loss of \$48,602.26 upon the respondent's operations as a whole in 1925 as compared with 1924 indicates that during the later year the return upon investment as respects the Muskegon run exceeded 7½ per cent.

It is further urged by the carrier that the Muskegon run is not to be segregated from the others, but that the profit of \$135,868.90 for 1924 is to be considered as merged in the losses incurred during that year on the other three runs and the four services treated as a whole. On this basis, the carrier contends that any reduction by the board of the leather rates under attack would be confiscatory. The unfavorable financial returns upon the respondent's operations as a whole can not justify the rates on leather assailed by the complainant if they are unreasonable, however, and a reduction of such rates if by the usual tests they are found unreasonable is not confiscation but is a proper exercise of the regulatory function. Furthermore, whether a carrier earns dividends on its operations as a whole affords little light upon the question as to the reasonableness of a rate on a particular commodity. "Indeed, the rates on particular commodities may be unreasonably high and yet the carrier fail to realize a fair return from its entire operations."¹

From our review of the evidence in this case we think it manifest that the principal if not the only consideration which moves the carrier in maintaining the rates from Muskegon and Grand Haven here brought in question is the contemporaneous rail rates with which they are closely aligned. Giving the fullest weight to the testimony that the respondent's leather rates from the three west-shore ports are unremunerative and that operating costs are higher on the east than on the west shore, our conclusion from all the facts before us is that since January 1, 1925, the rates assailed have been and are higher than reasonable for the water service performed.

According due consideration to all of the factors pertinent to the issues involved and the facts and circumstances of record, the board concludes and decides that the rates assailed have not been shown in violation of section 16 of the shipping act, as alleged; but that said rates were, are, and for the future will be, unjust and unreasonable in violation of section 18 of the statute to the extent which they have exceeded since January 1, 1925, now exceed, or may hereafter exceed, 56 cents per 100 pounds from Muskegon and 51 cents per 100 pounds from Grand Haven; and that said rates of 56 cents and 51 cents, including marine insurance, are reasonable maximum rates for the future. Upon the record the board finds that the complainant made shipments as alleged, and paid and bore the rates thereon;

¹ Wool rates from Boston to Philadelphia, 1 U. S. S. B. 21.

that it has been injured in the amount of the difference between such rates paid and those which would have accrued at the rates herein found reasonable, and that it is entitled to reparation. As the exact amount of reparation can not be determined upon the record, the parties are directed to comply with Rule XXI of the board's rules of practice. In the case of shipments which have moved subsequent to the hearing the details thereof may also be included in the reparation statement if accompanied by appropriate proof in the form of an affidavit that the shipments were made and that the freight charges thereon were paid and borne by complainant. Should respondent object to proof in the form of an affidavit, it may request a further hearing with respect to such shipments. An appropriate order will be entered.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 19th day of October, 1926

Formal Complaint Docket No. 28

Eagle-Ottawa Leather Company v. Goodrich Transit Company

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

It is ordered, That the respondent, Goodrich Transit Company be, and it is hereby, notified and required to cease and desist on or before November 1, 1926, and thereafter to abstain from publishing, demanding, or collecting the rates herein found unjust and unreasonable.

It is further ordered, That said respondent be, and it is hereby, notified and required to establish on or before November 1, 1926, upon one day's notice to the board and to the general public by filing and posting in accordance with section 18 of the shipping act, 1916, and Tariff Circular No. 1 of the board, and thereafter to maintain and apply to the transportation of less-than-carload shipments of leather as involved herein from Muskegon, Michigan, and Grand Haven, Michigan, to Chicago, Illinois, rates, including marine insurance, not to exceed 56 cents and 51 cents per 100 pounds, respectively, which said rates are prescribed as just and reasonable maximum rates.

And it is further ordered, That this order shall continue in force for a period not less than two years from the date when it shall take effect unless otherwise ordered by the board.

By the board.

[SEAL.]

(Sgd.)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

EX PARTE 3

INTERCOASTAL RATE INVESTIGATION

Submitted September 1, 1926. Decided November 4, 1926

Charges and schedules thereof now recorded with the board on behalf of intercoastal carriers not maximum rates or tariffs thereof within meaning of section 18 of shipping act and board's tariff regulations. Respondent carriers ordered to publish, post, and file tariffs showing maximum rates in fact currently held out and/or charged.

John H. Bunch, Alaska Steamship Company; *Joseph N. Teal*, American-Hawaiian Steamship Company; *John McAuliffe*, Argonaut Steamship Company (Inc); *A. P. Hammond*, California and Eastern Steamship Company; *G. B. Cromwell* and *H. J. Lang*, Certainteed Products Corporation; *W. T. Dingler* and *G. S. Hinkins*, Dollar Steamship Line; *Harry P. Mulloy*, Fels & Co.; *W. M. Campion* and *H. M. Runyon*, Garland Steamship Corporation; *L. B. Anderson*, Intercoastal Lumber Shippers' Association; *J. F. Schumacher*, Inter-Ocean Steamship Corporation; *Charles S. Belsterling*, Isthmian Steamship Lines; *Frank Lyon* and *R. C. Thackara*, Luckenbach Steamship Company (Inc.); *Frank S. Davis*, Maritime Association of Boston Chamber of Commerce; *W. H. Chandler*, Merchants' Association of New York; *Ira A. Campbell* and *C. B. Kellogg*, Munson-McCormick Line; *Semmes Steele*, Pacific-Caribbean Gulf Line (Inc.); *J. S. Mahool*, Panama Pacific Line; *B. Hoff Knight*, Philadelphia Ocean Traffic Bureau; *J. E. Bishop* and *Joseph Scott*, Transmarine Corporation; *W. P. Rudrow* and *Frederick H. Stokes*, United American Lines (Inc.); *C. A. Torrence*, United States Intercoastal Conference; *H. Robert Burney* and *J. A. Wells*, Williams Steamship Company (Inc.).

REPORT OF THE BOARD

By the second paragraph of section 18 of the shipping act, 1916, "every common carrier by water in interstate commerce" as defined in section 1 of that act is required to—

file with the board and keep open to public inspection, in the form and manner, and within the time prescribed by the board, the maximum rates, fares, and charges for or in connection with transportation between points on its own route, and, if a through route has been established, the maximum 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.

Conformably with the above provision of the act the board on April 30, 1920, promulgated its tariff regulations governing the publication, posting, and filing of maximum rates, fares, and charges in tariff form. At various times the 15 carriers now operating on regular routes between Atlantic and Pacific coast ports and/or between Gulf and Pacific coast ports of the United States via the Panama Canal have recorded with the board's bureau of regulation, either directly or by formal concurrence pursuant to these tariff regulations, schedules of charges for freight transportation designated "Tariffs of Maximum Rates." Whether the charges thus recorded are maximum rates as contemplated by section 18 and the board's tariff regulations has been a question repeatedly presented to our attention and is the subject of inquiry in the instant proceeding. The proceeding was enlarged to permit evidence of the existence of carriers other than those having charges recorded to which the requirements of section 18 have application. As no facts were presented regarding any such carriers, however, consideration herein respecting such additional inquiry will not be given.

The testimony of respondent carriers' witnesses is that the "maximum rates" recorded with the board are not charged, that they greatly exceed the rates actually observed, and that they give no information to shippers or to the board as to any rates applied. As shown by examination they are in most instances higher than the present transcontinental rates via rail. One of the schedules in which they are contained is plainly made up of pages clipped from a rail tariff in effect in 1921, since which time rail rates have been materially reduced.

Seven of the lines here respondent are members of the United States Intercoastal Conference, an organization designed to promote commerce in the intercoastal service "by establishing reasonable rates and charges for the transportation of merchandise and providing just and economical cooperation between the steamship lines operating in such trade."¹ As developed at the hearing, this conference issues what are known as "Minimum Rate Lists," contained in which are rates westbound and eastbound, respectively, purporting to govern the services of the member carriers. These lists are comprehensive in scope and, together with supplements as issued, are

¹ Conference agreement, paragraph 1.

furnished by the conference secretary to subscribing shippers and others at an annual charge of \$3.50. They are not filed with the board, nor does it appear that they are in any manner "posted" within the contemplation of the board's tariff regulations. Shippers not subscribers to the so-called minimum rate lists, as testified on behalf of one of the conference lines, are informed of rates charged "by correspondence, through the medium of interior offices or coast offices, or by personal contact with our freight solicitors, and in a variety of ways." The following comparison is illustrative of the "maximum rates" brought in question in this proceeding and the rates shown in the conference carriers' rate lists referred to:

WESTBOUND

	"Maximum rate" recorded	Conference list rate
Agricultural implements.....	\$3.08½	\$0.75
Boots and shoes, L. C. L.....	5.73½	2.00
Coffee, roasted.....	2.42	1.00
Cotton, in bales, compressed.....	2.00	.75
Drugs, L. C. L.....	4.16½	1.00
Flour, in bags.....	1.14	.50
Machinery.....	3.20	1.00
Paper, printing, N. O. S.....	1.92	.65
Roofing material, prepared.....	1.92	.60
Tobacco, unmanufactured.....	3.08½	.70

EASTBOUND

Beans, dried.....	\$1.42	\$0.45
Canned goods.....	1.20½	.45
Drugs, L. C. L.....	4.16½	1.20
Flour, in bags.....	1.75	.33
Fruits, dried.....	1.83½	.75
Hides, dry.....	2.16½	1.40
Leather, L. C. L.....	2.08½	1.00
Nuts, in bags.....	2.33½	1.00
Stone, marble, onyx, rough.....	1.15	.65
Wool, in grease, L. C. L.....	1.66½	1.00

Carload rates per 100 pounds, except as indicated.

According to the record, the respondent carriers not members of the conference follow generally the rates of the conference lines, in the main either observing the same or differentially lower rates. In illustration, it was testified by witness for one of the nonconference carriers that in rare instances his company might exceed the conference rate on a particular commodity, due to a difference of opinion as to classification. Ordinarily, however, his rates are affirmed to be from 5 to 15 per cent below conference rates. No lists or other schedules containing rates held out and/or charged of the character of the conference "minimum rate lists" are indicated to be published by any of the nonconference lines. Testimony on behalf of one of such carriers is that it is a subscriber to the conference rate lists

and quotes its rates by letter and verbally by using the conference rates as a basis.

From the foregoing it is manifest that each of the carriers respondent in this proceeding is in practice governed by a standard or scale of rates which it recognizes and observes. It is further established by the record that the carriers from time to time diverge from their respective standards or scales, by lowering their rates to meet competitive conditions. In no instance is there any indication that rates higher than those thus recognized and observed are in fact held out or charged at the present time.

At the hearing and upon briefs submitted on behalf of two of the respondents the contention is urged at length by counsel that the charges recorded with the board are maximum rates and that they furnish complete compliance with the requirement of the statute. Nothing is advanced in this proceeding, however, which persuades us that a maximum rate is anything other than that which the plain significance of its name implies. Our view is that a *rate* is a carrier's compensation for the performance of a transportation service. A *maximum* rate is a carrier's highest compensation for the performance of such service. Moreover, no uncertainty attaches to the term "maximum rates" as used in section 18 when considered in connection with the remainder of that section, or with any of the other regulatory provisions of the act. The requirement that carriers shall file with the board and keep open to public inspection, in the form and manner prescribed by the board, their "maximum rates," under penalty for misdemeanor as provided by section 32 of the statute, is in all respects consistent with and in furtherance of the purpose of Congress to regulate carriers by water engaged in interstate commerce. It definitely imposes upon carriers the obligation of keeping available in approved form information for use by shippers and others in connection with the substantial item of transportation cost involved in the purchase and sale prices of articles of interstate commerce. The compliance by carriers with this obligation is necessary to the administration of regulatory duties of the board, and, in practice, is conducive of adjustment as respects rate difficulties of the carriers themselves. While at the time they were recorded with the board the charges here brought in question may have represented the carriers' highest compensation for service, it is evident that as of the present time such charges are in no sense the *rates* of the respondents. Upon the record before us it is clear that they are mere figures bearing no relation to any rates in fact held out or applied, and that they signally fail to comply with the statute.

In all instances, so far as the present record discloses, the rates contained in the so-called "minimum" rate lists are in actuality the

existing highest or *maximum* rates of the conference carriers which should be on file with the board and open to public inspection as directed by section 18 and the board's tariff regulations. As evidenced upon the record it appears also that the highest rates observed by the nonconference lines are those generally based by them upon the conference carriers' maximum rates as here determined. Such rates are, under section 18, the present maximum rates of such nonconference lines which should be published, filed, and posted in pursuance of the statute.

Objection was indicated to change in the respondents' present manner of recognizing the requirement of section 18 here involved upon the ground that the filing and posting of the highest charges in fact held out and/or applied would establish such charges as maximum rates, and that higher rates could not under the statute be assessed by them as opportunity availed except after approval by the board and notice to the public. In this connection the third paragraph of section 18 directs that no carrier within the purview thereof—

shall demand, charge, or collect a greater compensation for such transportation² than the rates, fares, and charges filed in compliance with this section, except with the approval of the board and after 10 days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made, but the board for good cause shown may waive such notice.

Our tariff regulations accordingly provide that "the board in exceptional cases and for good cause shown will permit tariffs naming increased rates * * * to become effective on less than 10 days' notice," and prescribe the form of application to be addressed the board by carriers to that end.³ Even if, as apparently conceived by the carriers, the securing of board approval and the giving of public notice occasion inconvenience and possible detriment to them in advancing rates, these requirements are nevertheless the law as expressly set forth by Congress in the regulatory statute.

After consideration of all the facts, circumstances, and conditions of record, we conclude and decide that the charges now recorded with the board pursuant to section 18 of the shipping act, 1916, by intercoastal carriers respondent in this proceeding are not maximum rates within the meaning of that section; that the schedules of said charges thus recorded are not tariffs of maximum rates within the meaning of the board's tariff regulations, and that as maximum rates and tariffs said charges and schedules will for the future be unlawful for noncompliance with the statute. Each of the respondent

² Transportation between points on its own route, and between points on its own route and points on the route of any other carrier by water.

³ Tariff regulations, rule 23.

carriers will be directed to publish, post, and file in compliance with section 18 of the act and the tariff regulations of the board tariffs showing the maximum rates in fact currently held out and/or charged by it for the performance of freight transportation service. An order will be entered accordingly.

1 U. S. S. B.

LIBRARY
OF THE

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 7th day of June, 1927

EX PARTE 3

Intercoastal Rate Investigation

Whereas by resolution of March 9, 1926, the board entered upon a proceeding of inquiry and investigation concerning schedules and charges for transportation recorded with the board on behalf of intercoastal carriers in pursuance of section 18 of the shipping act, 1916; and

Whereas the board, after hearing, made and filed a report and order dated November 4, 1926, and having thereafter, upon application of certain of said intercoastal carriers, held a rehearing on May 23, 1927; it is

Ordered, That the said report and order of the board of November 4, 1926, be, and they are hereby, rescinded; and it is further

Ordered, That every common carrier by water subject to the requirements of section 18 of the shipping act, 1916, engaged in intercoastal service through the Panama Canal, shall, in respect to such service, within 60 days from date hereof and in compliance with the provisions of said section 18, file with the board, and keep open to public inspection in the form and manner prescribed by the board's tariff regulations, revised tariffs of maximum rates. A copy of this order shall be forthwith served upon each of said carriers, namely, American-Hawaiian Steamship Co., Argonaut Steamship Co. (Inc.), Arrow Line, California & Eastern Steamship Co., Dollar Steamship Line, Finkbine-Guild Transportation Co., Gulf-Pacific Line, Inter-ocean Steamship Corporation, Isthmian Steamship Lines, Luckenbach Steamship Co. (Inc.), Munson-McCormick Line, Ocean Transport Co. (Inc.), Panama Mail Steamship Co., Panama-Pacific Line, Transmarine Corporation, and Williams Steamship Co. (Inc.).

By the board.

[SEAL.]

SAMUEL GOODACRE, *Secretary.*

UNITED STATES SHIPPING BOARD

DOCKET No. 27

CONTINENTAL ROOFING AND MANUFACTURING
COMPANY

v.

BALTIMORE AND CAROLINA STEAMSHIP COMPANY

Submitted November 26, 1926. Decided February 23, 1927

Rate on roofing from Baltimore to Miami unjust and unreasonable during a part of the period covered by complaint. Complainant entitled to reparation.

Manghum & Manghum and Clinton Robb for complainant.

Marbury, Gosnell & Williams for respondent.

REPORT OF THE BOARD

Exceptions were filed by both complainant and respondent to the report proposed by the examiner and have been given careful consideration.

Complainant is a Maryland corporation engaged at Baltimore in the manufacture of roofing and building materials consisting of prepared roofing, asphalt and asbestos shingles, roofing cement and coating, and roofing and building paper, hereinafter called "roofing." The respondent, also a Maryland corporation, is engaged as a common carrier by water in the transportation of persons and property on regular routes between Baltimore, Md., and Miami, Fla., among other ports, and as such is subject to the shipping act, 1916.

By complaint seasonably filed under section 22 of said statute it is alleged by the roofing company that the respondent maintains and applies to carload shipments of its products from Baltimore to Miami a commodity rate which is, has been, and for the future will be unjust and unreasonable in violation of section 18 of the shipping act. The board is requested to effect a discontinuance of said alleged violation, to prescribe a reasonable maximum rate for the future, and to award reparation. Rates will be stated in cents per hundred pounds.

The extent to which the complainant is able to sell roofing in Miami is asserted to be dependent largely upon the rate of freight, because that market, according to the record, is controlled by a roofing manufacturer at New Orleans. It is indicated that roofing manufacturers located at York, Pa., also compete with the complainant upon the Miami market. Usually the complainant sells roofing to Miami consignees at Baltimore at a price inclusive of freight. For example, an exhibit of record shows that complainant sold 515 rolls of roofing weighing 40,151 pounds for \$1,015.70. From this sales price was deducted \$220.83 freight charges, so that complainant actually received \$794.87 for the consignment. As to shipments thus made, and to support its claim of interest therein in this proceeding, complainant presents assignments executed by the consignees transferring to it all rights to and interest in reparation thereon, if any found. On a few shipments complainant prepaid the freight charges.

The rate from Baltimore to Miami under attack is 55 cents, as published by the respondent in its Local Freight Tariff S. B. 147, effective November 17, 1923. This is a reduction from 63½ cents established on July 1, 1922. According to the record the respondent is the only boat line operating on a regular route directly from Baltimore to Miami, although several steamship lines on irregular routes are indicated to furnish service from Baltimore to Miami. These irregular lines, it is asserted, also quote a 55-cent rate on roofing.

The complainant submitted in evidence several exhibits which, together with testimony of record, show the following comparison of water rates on roofing applicable from Baltimore to Charleston, Savannah, Jacksonville, Miami, and Tampa, the relative distances involved, and the various carriers' per ton-mile earnings, as well as the water rates, distances, and earnings from New York, Philadelphia, and New Orleans to said ports:

From—	To—				
	Charleston	Savannah	Jacksonville	Miami	Tampa
Baltimore:					
Carrier.....	B. & C.	M. & M. T.	M & M. T	B. & C	Bull.
Distance.....	548	621	712	955	1,344
Rate.....	26	25	25	55	29½
Earnings ¹	9.5	8	7	11.5	4.3
Philadelphia:					
Carrier.....	B & C.	M & M. T.	M. & M. T.	B. & C.	Commercial.
Distance.....	¹ 643	670	761	1,004	1,394
Rate.....	¹ 30½	25	25	55	26
Earnings ¹	9.5	.7.5	6.6	10	3.7

¹ In mills per ton-mile.

² Rate and mileage via Baltimore.

From—	To—				
	Charleston	Savannah	Jacksonville	Miami	Tampa
New York:					
Carrier	Clyde.	Ocean.	Clyde.	Clyde.	Mallory.
Distance	627	700	792	1,035	1,424
Rate	25½	30½	25½	59½	29½
Earnings ¹	8.1	8.7	6.4	11.5	4.2
New Orleans:					
Carrier				G. & S.	G. & S.
Distance				730	474
Rate				35	25
Earnings ¹				9.6	10.5

¹ In mills per ton-mile.² Jacksonville combination.

Abbreviations:

B. & C.	Baltimore and Carolina Steamship Co.
Bull.	Bull Steamship Line, Inc.
Clyde.	Clyde Steamship Co.
Commercial.	Commercial Steamship Lines.
G. & S.	Gulf & Southern Steamship Co.
Mallory.	Mallory Steamship Co.
M. & M. T.	Merchants and Miners Transportation Co.
Ocean.	Ocean Steamship Company of Savannah.

From the above comparison it is observed that the only rate on roofing higher than the one under attack is that from New York to Miami, which is made on a combination of a 25½-cent local rate to Jacksonville and a 34-cent rate beyond. Other rates and per ton-mile earnings shown are substantially lower than the rate and per ton-mile earning from Baltimore to Miami in controversy. Complainant lays particular stress on the rate from New Orleans to Miami, which is 20 cents lower than the rate under attack. Recognizing, of course, that the services involved are by different carriers and from different ports, and that the geographical location of New Orleans affords a natural advantage in distance of 225 miles, it is observed that the respondent's per ton-mile earning is 1.9 mills greater for the longer distance.

While, as urged by the complainant, rates via other lines from various ports to Miami and between other ports may properly be compared with the rate under attack, the weight which can be accorded such comparisons is obviously limited. Of somewhat more definite bearing in the instant case, we think, is the rate maintained by the respondent from Baltimore to Charleston relied upon and exhibited by the complainant. The rate on roofing to Miami is 111 per cent higher than the Charleston rate, yet the distance increase is but 74 per cent. For the longer distance the respondent earns 2 mills more per ton-mile than to Charleston.

In regard to the rate on roofing to Miami from Philadelphia maintained by respondent on the same basis as its rate from Baltimore, there is, according to the evidence, no producer of roofing located at Philadelphia and nothing of record to show but that little,

if any, roofing moves therefrom on the respondent's local rate. It is clearly shown, however, that during the period covered by this complaint a substantial volume of roofing was carried by the respondent from Baltimore.

In addition to its contention that the 55-cent rate on roofing from Baltimore to Miami is unreasonable by comparison with rates between other ports, respective distances involved, and earnings, the complainant relies upon comparisons of commodity rates on other articles from Baltimore to Miami contained in respondent's same tariff, together with their respective relations, to establish classification ratings thereon. The following table shows the specific rates applicable to such other articles, class rates, carload minimum weights, cubic feet per ton, and value, as compared with roofing:

Commodity	Commodity rate	Class rate	Minimum weight	Cubic feet per ton (2,240 pounds)	Value per ton (2,000 pounds)
Asphalt and asphaltum.....	44½	68	40,000	53	\$20.00
Canned goods.....	56	100	36,000	60	94.00
Coffee, green.....	60	100	30,000	62	230.00
Molasses, glucose, and syrups.....	48	100	36,000	56	80.00
Potatoes.....	54	87	36,000	63	29.00
Salt.....	18	68	40,000	61	17.60
Soap.....	51	87	36,000	58	130.00
Sugar, refined.....	35	100	40,000	53	168.00
Roofing.....	55	68	40,000	56	49.00

The average percentage relationship which the commodity rates other than on roofing included in the above analysis bear to the corresponding class bases provided by the Southern Freight Classification and removed by the specific rates is 52 per cent, whereas the commodity rate on roofing is 80.9 per cent of the rate under the classification. The earning on roofing, as heretofore shown, is 11.5 mills per ton-mile, while the average per ton-mile earning on the other commodity rates exhibited above is 9.6 mills.

As to bulk the comparison above shows that roofing occupies 2 cubic feet less per long ton than the average of the other eight commodities, yet the average rate per 100 pounds for the articles other than roofing is 9 cents less. It is also noted that the carrier's revenue from a cubic foot of roofing is 25 per cent more than from the average of the other exhibited articles.

Respecting the element of value, it is observed from the above table that the other commodities average \$47.07 per short ton more than roofing. Particular stress is laid by the complainant upon the value of roofing as compared with soap, it being emphasized that soap is over 2½ times as valuable as roofing and the rate 4 cents per 100 pounds less.

Regarding risk involved in connection with the transportation of roofing, it is testified that since complainant has been shipping via the respondent's line it has had occasion to file only two loss and damage claims against it.

Out of a through rail-and-water rate of 55 cents on roofing from York, Pa., to Miami, via Baltimore, the respondent's proportion is 41 cents. This proportional as compared with the 55-cent port-to-port rate under attack, and in connection with other factors has bearing upon the reasonableness of the latter rate, considering that the services rendered by the respondent in regard to both are necessarily similar in many respects.

On behalf of the respondent it is shown that six lake-type boats of a carrying capacity of 1,414 tons each are operated by it on its Baltimore-Miami route. Whereas three weeks are ordinarily required to make a round trip, it is shown that because of congested port conditions at Miami, existing since early in the summer of 1925, it frequently takes one of these vessels about five weeks to complete its itinerary. Beginning about June 1 of that year, according to the record, it has been difficult to secure berthing, and respondent has paid as high as \$1,900 rental for dock space, in addition to a charge of \$25 for each ship a day. During much of the time since that date it is testified respondent's ships have been tied up from a week to 10 days on nearly every trip at a cost of \$500 per day. In addition, and as illustrative of expense incurred incident to abnormal port conditions at Miami, the record shows that the cost to the respondent for dock labor for the month of December, 1925, was \$5,900. Stevedores are paid \$1 an hour, whereas before the congestion they received 30 cents an hour. Often, because of inability to discharge, it is testified, the respondent's vessels have been forced to return with either full or part cargo aboard.

The absence of practically all return cargo from Miami during both normal and congested times is stressed by the carrier. Ordinarily, prior to June, 1925, its vessels left Miami light for Charleston and Georgetown, at which ports cargo for Baltimore would be available. Since the congestion took place, however, respondent has not been able to call at the South Carolina ports with every ship, but has been forced in many instances to return empty from Miami directly to Baltimore.

From a review of the instant case as a whole, we are convinced that because of disparities shown herein the rate under attack was measurably unjust and unreasonable until the time congestion in the Miami service began, and this, notwithstanding allowance for the peculiarities which characterized that service, including recognized seasonal traffic and lack of return cargo. Because of well-

known conditions which have existed in the Miami service since congestion set in, however, as depicted by the respondent upon the record, we are equally convinced that complainant's allegation of subsequent unreasonableness of the 55-cent rate on roofing is without support. In this connection, complainant's traffic manager upon cross-examination testified that the complaint covered only normal conditions.

According due consideration to all the factors pertinent to the issue involved and the facts, circumstances, and conditions of record, we conclude and decide that prior to June 1, 1925, the rate on roofing under attack was unjust and unreasonable to the extent that it exceeded 46 cents, but that since June 1, 1925, and for the future, said rate has not been shown to be violative of section 18 of the act, as alleged. We find that the complainant made shipments of roofing over respondent's line from Baltimore to Miami as alleged, and has been injured to the extent that the rate paid exceeded 46 cents per 100 pounds hereby determined a reasonable maximum rate for the period involved; that the extent of said injury is the difference between the rate paid and said reasonable maximum rate for the period covered by this complaint up to and including May 31, 1925; and that complainant is entitled to reparation therefor, with interest. The amount of reparation can not be determined upon the existing record. Statement should be prepared by complainant showing the details of the shipments covered hereby, specifying dates between May 19, 1923, and May 31, 1925, inclusive, upon which the charges were paid, and same should be submitted to the respondent for verification. Upon receipt of a statement so prepared and verified in accordance with Rule XXI of our Rules of Practice, we will consider the entry of an award of reparation.

1 U. S. S. B.

UNITED STATES SHIPPING BOARD

EX PARTE 3

INTERCOASTAL RATE INVESTIGATION

Submitted May 23, 1927. Decided June 7, 1927

Report and order of November 4, 1926, rescinded. Respondents ordered to file and post revised tariffs of maximum rates within 60 days

Ira A. Campbell, American-Hawaiian Steamship Co., Arrow Line, Dollar Steamship Line, Gulf-Pacific Line (Inc.), Luckenbach Steamship Co. (Inc.), Transmarine Corporation; G. S. Hinkins, Dollar Steamship Line; M. H. Hoskier, Panama-Pacific Line; C. B. Kellogg, Munson-McCormick Line; Frank Lyon, American-Hawaiian Steamship Co., California & Eastern Steamship Co., Luckenbach Steamship Co. (Inc.), Ocean Transport Co. (Inc.), InterOcean Steamship Corporation; W. P. Rudrow, Arrow Line; Joseph Scott, Transmarine Corporation; R. C. Thackara, Luckenbach Steamship Co. (Inc.); C. A. Torrence, United States Intercoastal Conference; J. A. Wells, Williams Steamship Co. (Inc.).

Following the issuance of the board's report in this case on November 4, 1926, and subsequent extension of time to permit compliance with the order therein, seven¹ of the carriers respondent filed applications for rehearing. Such applications were granted and rehearing was accordingly conducted by the board on May 23, 1927.

At the outset of the rehearing suggestion was volunteered by the seven respondents that as they are now compiling revised tariffs of maximum rates to be filed with the board at an early date under section 18 of the shipping act, 1916, that it was unnecessary to argue on the board's order of November 4, 1926, and that in view of all the circumstances the record could be closed by rescission of the board's order in controversy.

The view of the board is that the respondents be given opportunity to file revised tariffs of maximum rates as suggested and that upon the record the order of November 4, 1926, together with the report upon which it was predicated, may be rescinded provided that nothing contained in said report or order be regarded as a precedent.

Accordingly the board's order now to be entered is that the report and order of November 4, 1926, be rescinded and that each of the respondent carriers file and post revised tariffs of maximum rates within 60 days.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 7th day of June, 1927

EX PARTE 3

Intercoastal Rate Investigation

Whereas by resolution of March 9, 1926, the board entered upon a proceeding of inquiry and investigation concerning schedules and charges for transportation recorded with the board on behalf of intercoastal carriers in pursuance of section 18 of the shipping act, 1916; and

Whereas the board, after hearing, made and filed a report and order dated November 4, 1926, and having thereafter, upon application of certain of said intercoastal carriers, held a rehearing on May 23, 1927; it is

Ordered, That the said report and order of the board of November 4, 1926, be, and they are hereby, rescinded; and it is further

Ordered, That every common carrier by water subject to the requirements of section 18 of the shipping act, 1916, engaged in intercoastal service through the Panama Canal, shall, in respect to such service, within 60 days from date hereof and in compliance with the provisions of said section 18, file with the board, and keep open to public inspection in the form and manner prescribed by the board's tariff regulations, revised tariffs of maximum rates. A copy of this order shall be forthwith served upon each of said carriers, namely, American-Hawaiian Steamship Co., Argonaut Steamship Co. (Inc.), Arrow Line, California & Eastern Steamship Co., Dollar Steamship Line, Finkbine-Guild Transportation Co., Gulf-Pacific Line, Inter-ocean Steamship Corporation, Isthmian Steamship Lines, Luckenbach Steamship Co. (Inc.), Munson-McCormick Line, Ocean Transport Co. (Inc.), Panama Mail Steamship Co., Panama-Pacific Line, Transmarine Corporation, and Williams Steamship Co. (Inc.).

By the board.

[SEAL.]

SAMUEL GOODACRE, *Secretary.*

UNITED STATES SHIPPING BOARD

EX PARTE 4

SECTION 15 INQUIRY

Submitted November 8, 1926. Decided August 16, 1927

Charles S. Belsterling for Isthmian Steamship Lines; Frank N. Bowers for International Freighting Corp.; Ira A. Campbell for A. H. Bull & Co., Bull-Insular Line, Dollar Steamship Line, McCormick Steamship Co., and Munson Steamship Line; M. F. Cropley for Matson Navigation Co. and Oceanic Steamship Co.; Harold S. Deming for Booth-American Shipping Corp. and Export Steamship Corp.; W. V. Harloe for United Fruit Company; Roscoe H. Hupper for American Diamond Lines, American Levant Line, American Line, American Merchant Lines, Anchor Donaldson Line, Anchor Line, Atlantic Transport Line, Baltic America Line, Blue Funnel Line, Bristol City Line, Cairn Thomson Line, Canadian Pacific Steamships, Ltd., Clyde Steamship Company Santo Domingo Line, Columbus Marine Corp., Compagnie Generale Transatlantique, Cosulich Line, Cunard Line, Cunard Steam Ship Company, Limited, Donaldson Line, Ellerman's Phoenix Line, Ellerman's Wilson Line, Export Steamship Corp., Fabre Line, Furness Lines, Hamburg-American Line, Head Line, Holland America Line, Inter-Continental Transport Services, Lamport & Holt, Ltd., Leyland Line, Lloyd Sabaudo, Lord Line, Manchester Liners, National Greek Line, Navigazione Generale Italiana, Navigazione Libera Triestina, New York and Cuba Mail Steamship Company, New York & Porto Rico Steamship Company, North German Lloyd, Norwegian-America Line, Oriole Lines, Pacific Steam Navigation Company, Panama Pacific Line, Red "D" Line, Red Star Line, Royal Holland Lloyd, Royal Mail Steam Packet Company, Scandinavian-American Line, Spanish Royal Mail Line, Swedish American Line, Transatlantica Italiana, United States Lines, White Star Line, and Yankee Line; Kerr Steamship Company, Inc., agents, for Wilhelmsen Line and Cia de Navegacao Lloyd Brasileiro; Frank P. Latimer for American Palmetto Line, Carolina Company, Donaldson Line, Henry Nan-

ninga Co., Troisdal, Plant & Lafonta, and J. A. VonDohlen Co.; John McAuliffe for Argonaut Steamship Line; E. K. Morse for American Despatch Line, Lone Star Steamship Co., McCormick Steamship Co., Munson-McCormick Line, and Munson Steamship Line; J. B. O'Reilly for American & Australian Line, American and Indian Line, American & Manchurian Line, Ellerman & Bucknall, and Norton, Lilly & Co.; A. W. Parry, jr., for Atlantic, Gulf & Oriental Steamship Co., Bank Line, Barber Steamship Line, Dollar Line, Fern Line, Furness, Withy & Co., Alfred Holt & Co., Kerr Steamship Line, Nippon Yusen Kaisha, Norton, Lilly & Co., Osaka Shosen Kaisha, and Suzuki & Co.; Forman B. Pearce for Maritimes à Vapeur and Societa Generale de Transports; N. O. Pedrick for American Delta Line, American Dixie Line, American Premier Line, Fern Line, Gulf & West Mediterranean Line, Head Line, Lord Line, Lykes Bros. Ripley Steamship Co., Inc., Maclay Line, Richard Meyer Co., Mississippi Shipping Co., Navigazione Alta Italia, Ross & Heyn, Inc., Societa Generale de Transports Maritime à Vapeur, Southern Shipping & Trading Co., Southern States Line, Hugo Stinnes Line, Swedish America Mexico Line, Tampa Inter-Ocean Steamship Co., Texas Star Line, Trans-Atlantic Steamship Co., Troisdal, Plant & Lafonta, and United Gulf Steamship Co., Inc.; W. P. Rudrow for Arrow Line; Joseph N. Teal for American-Hawaiian Steamship Co., Columbia Pacific Shipping Co., and Oregon Oriental Line; C. A. Torrence for American-Hawaiian Steamship Co., Argonaut Steamship Co., Inc., Arrow Line, Dollar Steamship Line, Luckenbach Steamship Co., Inc., Munson-McCormick Line, and Panama-Pacific Line.

REPORT OF THE BOARD

Section 15 of the shipping act, 1916, provides that a carrier subject to that statute shall file immediately with the board a true copy, or, if oral, a true and complete memorandum of "every" agreement¹ with another such carrier, or modification or cancellation of such agreement, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares, giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any

¹ The term "agreement" in this section includes understandings, conferences, and other arrangements.

way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an-exclusive, preferential, or cooperative working arrangement.

Section 15 further provides that the board may by order disapprove, cancel, or modify any such agreement, modification, or cancellation thereof that it finds unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters of the United States and their foreign competitors, or to operate to the detriment of commerce of the United States, or to be in violation of the shipping act, and that it shall approve all others.

The fourth paragraph of section 15 provides that all agreements, modifications, or cancellations made after the organization of the board "shall be lawful only when and as long as approved by the board; and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation."

Agreements, modifications, and cancellations lawful under section 15 are by the fifth paragraph of that section excepted from the provisions of the Sherman Antitrust Act, Wilson Tariff Act, and amendments and acts supplementary thereto.

Owing to divergence of practice by conference carriers as to the character of material submitted for the board's attention, the board on June 16, 1926, initiated the instant proceeding for the purpose of ascertaining the meaning of the word "every" as used in section 15 in relation to agreements required to be filed. One hundred and ninety-two carriers having membership in 43 active conferences were named respondents.

In the case of nine of the forty-three conferences, copies or memoranda of agreements setting forth the plan and modifications thereof by which the respective conference organizations are governed are all that have been furnished the board. Twenty-five of the forty-three conferences furnish the board with copies of the minutes of their regular and special meetings, in which are noted the current conference activities. Twenty conferences furnish tariffs of rates and charges; six furnish circulars as issued by the conference secretaries to the member lines; eight furnish minutes and tariffs; three furnish minutes, circulars, and tariffs; two furnish minutes and circulars, and one furnishes circulars and tariffs. Unlike the other forty-two, one of the conferences is without a basic or so-called "organic" agreement on file but regularly furnishes minutes of its meetings. The carriers comprising the membership of this last conference, the board was informed, are now preparing such an agreement for filing.

Of the carriers' representatives examined, the testimony of all but two is to the effect that the minutes, circulars, and tariffs of their respective conferences are not looked upon by the carriers as copies or memoranda of agreements required to be filed with or acted upon by the board; that the conferences furnishing the same do so to inform the board regarding their minor or routine understandings reached in pursuance of the organic agreements and modifications thereof which have been filed and have had board approval, and that copies or memoranda of their respective organic agreements, modifications, and cancellations thereof are all that section 15 contemplates.

Of the two conferences not in accord with the above, testimony on behalf of one is that its minutes are furnished the board because of a provision of its organic agreement making conference action within the scope of that agreement as binding upon the members as if expressly made a part thereof. By reason of this provision, it is contended, routine arrangements arrived at by the members of this conference respecting rate changes and other details of operation are an integral part of the organic agreement and required by the statute to be filed. It is apparent to the board, however, that such a provision can not convert routine arrangements between the carriers themselves into agreements under section 15. The position of the other of the two dissenting conferences is that its purpose in furnishing minutes is to insure that every arrangement effecting modification of the conference organic agreement "which might be made" by the conference members in the course of their meetings shall be filed. In the words of the conference representative, "We put it in the minutes, and if we do not hear from the board we consider it was in order. We leave it up to the board to conclude which was an agreement under section 15 and which was not." In this connection it should be stated that in the past the board has followed the practice of approving without comment agreements recorded in conference minutes, circulars, and tariffs furnished it which after examination have been found upon their face to be unobjectionable. This and other matters relating to the filing of section 15 agreements in the future will be the subject of regulations to be issued by the board separately from this proceeding.

In the nature of transportation by water, it is manifest that conference agreements within the purview of section 15 are those whereby the carriers propose to be governed in their conference activities as to matters specified in the first paragraph of that section. Agreements arrived at by conference carriers providing for fixing or regulating transportation rates or fares, and the other matters speci-

fied,² and agreements modifying or cancelling such agreements are within the meaning of section 15. By that section, the burden of filing copies or memoranda of all such agreements is put upon the carriers, and performance under them is unlawful until they have received board approval. Such agreements are to be distinguished from the routine of conference activities.

As contended by conference representatives in this proceeding, a too literal interpretation of the word "every" to include routine operations relating to current rate changes and other day-to-day transactions between the carriers under conference agreements would result in delays and inconvenience to both carriers and shippers. The usual though not invariable practice followed by conferences of sending the board copies of minutes of their meetings and of circulars and tariffs as issued to the members, which contain references only to routine arrangements for the carriers' record and guidance and not imposed by section 15, is not to be regarded as a filing under section 15, but as information on conference activities. By section 21 of the shipping act the board of course has authority to require the submission of such information, if needed in the administration of its regulatory duties; but no exercise of that authority in this connection has been evoked.

² Giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 16th day of August, 1927

EX PARTE 4

Section 15 Inquiry

Whereas, by resolution of June 16, 1926, the board entered upon a proceeding regarding the meaning of the word "every" as used in section 15 of the shipping act, 1916, in relation to the character of steamship conference agreements required to be filed; and

Whereas full hearing and investigation having been had, and the board having on the date hereof made and filed a report, which said report is hereby referred to and made a part hereof: Now, therefore, it is

Ordered, That this proceeding be, and it is hereby, concluded with said report.

By the board.

[SEAL]

(Sgd.)

SAMUEL GOODACRE,

Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 31

TRUMBULL-VANDERPOEL ELECTRIC MANUFACTURING
COMPANY, INC.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted May 23, 1927. Decided June 23, 1927

Rates not shown unjust, unreasonable, or illegal, as alleged. Complaint dismissed

George F. Mahoney for complainant.

Frank Lyon for respondent.

REPORT OF THE BOARD

Examiner's proposed report in substantial conformity with the following was served upon the parties in accordance with the board's rules of practice. Exceptions filed on behalf of the complainant have been duly considered.

Complainant is a Connecticut corporation operating a plant at Bantam in that State. The respondent is a Delaware corporation, engaged as a common carrier in the transportation of property on regular routes between Atlantic and Pacific coast ports of the United States via the Panama Canal, and as such is subject to the shipping act, 1916. By complaint seasonably filed under section 22 of said statute it is alleged that respondent's rates on shipments of complainant's product from New York City to Los Angeles and San Francisco, California, and to Portland, Oregon, were unjust, unreasonable, and illegal in violation of section 18 of the shipping act. The board is requested to award reparation. Rates will be stated in amounts per 100 pounds.

The 132 shipments involved in this complaint ranged in weight from approximately 100 to 9,160 pounds, and were made during the period January 7, 1924, to November 4, 1925. They were consigned to the Allied Industries, complainant's Pacific coast sales representatives. Some of the shipments were trucked from complainant's factory to ship side at New York and others were transported by rail to the respondent's piers at that port. From thence they were

carried by the respondent to destination upon local ocean bills of lading executed by the respondent carrier usually at \$2.20, \$2.45, and \$2.50. Amounts in excess of the rate of \$2.20, it is stated by the carrier's witnesses, were erroneously assessed as penalty charges because of packing, and respondent has offered to make refund thereof. In certain instances the carrier charged a rate of \$1.20. This difference of \$1 in the rate charged is apparently attributable to conflicting descriptions shown in certain shipping papers of record covering the shipments involved. When the complainant's product was described as a "steel switch box with necessary interior fittings and electric switches," or similarly, the higher rate was exacted, whereas when it was termed an "electric switch" the lower rate was charged.

The rates of \$2.20 and \$1.20 above referred to, together with their corresponding carload rates of \$1.50 and 90 cents, are contained in a so-called Westbound Minimum Rate List, published by the United States Intercoastal Conference. The respondent is a member of this conference and generally observes the rates therein named. By reference to a copy of this minimum rate list made of record in the instant proceeding, it is noted that the l. c. l. rate of \$2.20 complained of is 2d class under Western Classification, and that the corresponding carload rate of \$1.50 is 4th class under that classification. The rates of \$1.20 and 90 cents contended for by the complainant are commodity rates (l. c. l. and c. l., respectively), applicable to "Electrical Appliances N. O. S. classified 'Class A' under heading 'Electrical Appliances' in current Western Classification" and other generally related commodities. The complainant directs our attention to the fact that included in the description of articles to which these commodity rates are applied by the carrier is the following subheading: "Switches or Parts Thereof."

Both at the hearing and upon the briefs the effort of the complainant is to show that the article shipped was a switch, and hence within the commodity description of articles to which the rates of 90 cents carload and \$1.20 less carload applied. The component parts of the complainant's product are a steel box, an insulated base, a mechanism which conducts or breaks an electric current, and fuse sockets or receptacles. Manifestly, this article is a switch box with interior fittings, and definitely within the classification "Conduit outlet boxes, with or without covers, or switch boxes, iron or steel, with interior fittings, other than switches."¹ The phrase "other than switches" does not, as contended by the complainant, exclude a switch box containing a switch. On the contrary it comprehends a switch box and interior fittings, one of which fittings may be a switch.

¹ Consolidated Freight Classification No. 4, p. 162, Items 3 and 4.

The purpose of the phrase is merely to distinguish the article described from the item of the classification covering switches.² From the nature of the complainant's product as shown upon the record, it is evident that the rating as applied by the respondent was correct.

The complainant sets forth in evidence comparisons of the \$2.20 rate charged with the respondent's rates on other commodities. The 4th class rate applicable in connection with carload shipments of the complainant's product is included. Of these commodities those taking rates for which the complainant contends, together with the respective weights and values per cubic foot, are summarized below:

Commodity descriptions	Rates (westbound minimum rate list)		Weight in pounds per cubic foot	Value in cents per pound
	C. L. ¹	L. C. L.		
Fans, electric.....	\$0.90	\$1.20	13	54
Magnetos.....	.90	1.20	46	158
Meters, electric.....	.90	1.20	33	96
Starters, gasoline engine.....	.90	1.20	63	83
Switches, knife.....	.90	1.20	35	29
Telephones.....	.90	1.20	32	60
Complainant's product.....	¹ 1.50	2.20	27	23

¹ Minimum weight 10,000 pounds unless otherwise indicated.

² Minimum weight 30,000 pounds.

It is to be observed that while the rates on the complainant's product are 60 cents carload and \$1 less-than-carload higher than the rates upon the other commodities, with one exception the complainant's product occupies considerably more space. The average greater weight of the other articles per cubic foot is 10 pounds, the complainant's product therefore requiring 37 per cent more space within which to be loaded on shipboard. At the rates of 90 cents carload and \$1.20 less carload contended for, the carrier's revenue per cubic foot on the complainant's product would have been lower by 9 cents and 12 cents, respectively, than from the average of the other articles. While, as stressed by the complainant, its product per pound and per cubic foot is less valuable than any of the other articles above exhibited, we are not of opinion that such fact is determinative, in view of the factor of space and the recognized disturbed condition of intercoastal rates. Furthermore, no evidence was introduced regarding comparative volumes of movement, an important consideration in connection with commodity rates. The rates, weight, and value of numerous other articles, such as brushes, cigars, spark plugs, etc., are also compared by the complainant with its product. A painstaking review of all of the elements involved, however, fails to show

² Page 161, item 26.

that upon the record the allegation of unjustness and unreasonableness of the rates attacked can be sustained.

No evidence was adduced by the complainant to support the allegation that the rates in question were illegal because not filed with the board.

After examination of all the facts and circumstances of record in this proceeding, the board concludes and decides that the rates on the complainant's product have not been shown unjust, unreasonable, or illegal in violation of section 18 of the shipping act, as alleged. The complaint will be dismissed.

An order will be entered accordingly.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 23d day of June, 1927

Formal Complaint Docket No. 31

Trumbull-Vanderpoel Electric Manufacturing 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 board having on the date hereof made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and attached:

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

By the board.

[SEAL.]

(Sgd.)

SAMUEL GOODACRE,

Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 35

DOBLER & MUDGE

v.

PANAMA RAIL ROAD STEAMSHIP LINE

Submitted July 13, 1927. Decided August 23, 1927

Rate not shown unjust or unreasonable in violation of section 18 of the shipping act, 1916, as alleged. Complaint dismissed

Howard P. Rowe for complainant.

Richard Reid Rogers and *Anderson Woods* for respondent.

REPORT OF THE BOARD

Examiner's tentative report in substantial conformity with the following was served upon the parties in accordance with the board's rules of practice. No exceptions thereto were filed.

Complainant is engaged in the wholesale paper business at Baltimore, Md. Respondent is a common carrier by water engaged in the transportation of property between the ports of New York, N. Y., and Cristobal, Canal Zone, and as such is subject to the provisions of the shipping act, 1916. By complaint filed under authority of section 22 of the shipping act it is alleged that the rate of the respondent carrier applicable to shipments of paper towels from New York to Cristobal was when exacted and is unjust and unreasonable in violation of section 18 of that statute. The board is requested to effect a discontinuance of said alleged violation.

On August 10, 1926, complainant shipped via the respondent from New York 200 cases of paper towels, weighing 19,580 pounds and measuring 2,900 cubic feet, consigned to the Panama Canal, Cristobal. These paper towels were purchased by complainant at an invoice price of \$1,050 delivered f. o. b. docks Panama Line, New York, and were sold for \$1,200 delivered at Colon. The rate charged was 15 cents per cubic foot, or \$435.

The authority for the rate assessed is respondent's Freight Classification and Tariff S. B. No. 6. Under the rule of said tariff governing the application of all rates contained therein (Item 22), it is specifically stated that—

All rates * * * are to be charged per cubic foot or per 100 pounds, whichever yields the greater revenue, at the option of the carrier.

Further, Item 30, which publishes the class rates from New York to Cristobal, provides that rates will be "per cubic foot or per 100 pounds at the carrier's option." Two sets of fourth-class rates are carried in the aforesaid tariff, viz: 20 cents per cubic foot and 40 cents per 100 pounds, both subject to a reduction of 25 per cent on canal supplies. In the instant case, as when calculated on a measurement basis the shipment returned a greater revenue than when calculated on a weight basis, the former basis was used.

It appears from the record that complainant when filing its bid for the sale of the paper towels here concerned had in mind that the rate applicable thereto was the rate per 100 pounds, which impression was gained from the fact that on prior shipments to the Panama Canal the weight rate was charged. Examination shows, however, that such shipments were comprised of paper commodities other than towels, which by weight returned a greater revenue than by measurement. Complainant offered no evidence as to the unjustness or unreasonableness of the rate under attack other than to show that it approximated 36¼ per cent of the value of the shipment involved, whereas in respect to certain other of the complainant's shipments the rate approximated from 2 per cent to 6¼ per cent of the value thereof. While one of the factors for use in the consideration of the justness and reasonableness of a given rate, value when standing alone is not determinative. In defense of the lawfulness of the rate charged, the respondent sets forth the bulky character of the complainant's shipment, and the widely established practice of water carriers in charging for the transportation of bulky articles upon a measurement rather than upon a weight basis.

Upon consideration of all the facts of record, the board concludes and decides that the rate complained of has not been shown unjust or unreasonable in violation of section 18 of the shipping act, 1916; as alleged. The complaint, therefore, will be dismissed.

An order will be entered accordingly.

1. U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 23d day of August, 1927

Formal Complaint No. 35

Dobler & Mudge v. Panama Rail Road Steamship 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 board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

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

By the Board.

[SEAL.]

(Sgd.)

SAMUEL GOODACRE, *Secretary.*

UNITED STATES SHIPPING BOARD

DOCKET No. 41

I. C. HELMLY FURNITURE COMPANY,

v.

MERCHANTS AND MINERS TRANSPORTATION COMPANY

Submitted November 5, 1927. Decided December 28, 1927

Rates on furniture and carpet paper from Savannah, Ga., to Miami, Fla., not shown in violation of section 18 of shipping act, 1916, as alleged.

W. R. Alexander for complainant.

Richard B. Gwathmey for respondent.

REPORT OF THE BOARD

Tentative report in substantial conformity with the following was served upon the parties in accordance with the board's rules of practice. No exceptions thereto were filed.

Complainant is engaged in the furniture business in Savannah, Ga. Respondent is a corporation engaged as a common carrier in the transportation by water of freight and passengers between ports in the State of Georgia and the State of Florida, and as such is subject to the shipping act, 1916.

By complaint filed under section 22 of the shipping act, 1916, it is alleged that on various shipments of furniture and carpet paper from Savannah, Ga., to Miami, Fla., during the period July 13 to August 10, 1925, inclusive, complainant was subjected to the payment of unjust and unreasonable rates in violation of section 18 of the shipping act. Reparation is prayed for in the amount of \$104.76.

On January 1, 1925, the respondent published and filed its Local Freight Tariff S. B. No. 450, naming class and commodity rates between Savannah, Ga., and Miami, Fla., and governed by southern classification. The rates on complainant's shipments thereunder, according to article, were \$1.41, 95, 85, and 79 cents. At time of shipments, three routes were available to the complainant—all rail; via the respondent carrier to Jacksonville and the Florida East Coast Railway to destination, and via the respondent carrier to Jack-

sonville and the Clyde Steamship Company to destination. The latter was the route of movement, and the rates charged via this route and now brought in issue were \$2.50, \$1.68, \$1.48, and \$1.30½.

It is contended on behalf of the complainant that inasmuch as the respondent Merchants and Miners Transportation Company published and filed with the board a tariff providing for direct service from Savannah to Miami at specified maximum rates, it held itself out to the public and was required by section 18 of the shipping act to furnish service from and to such ports at rates not in excess of those so specified. As the rates exacted were in amount greater than such rates, it is contended they were for that reason unjust and unreasonable.

The respondent carrier admits that prior to the movement involved in this complaint it published and filed through rates via direct service Savannah to Miami. It shows, however, that pier space was not available at Miami, and that owing to congestion at that port such direct service did not begin until October 5, 1925. Upon the record it further shows that immediately following the publication of its tariff, notice was given to the Savannah shipping trade, including the complainant, of its inability to furnish direct Savannah-Miami service until such time as adequate pier space was available in Miami; and that in reply to complainant's question as to the practicability of the route via respondent carrier to Jacksonville and rail beyond, the much lower rated water route via the respondent's line and the Clyde Steamship Company was called to his attention.

According to the record, it is manifest that the direct Savannah to Miami service of the respondent was under embargo at the time the complainant's shipments moved, and that the fact of such embargo was brought to the attention of interested shippers, including the complainant. During the period of the embargo the common carrier status of the respondent, as respects the direct Savannah-Miami service, was nonexistent, and the tariff covering such service was correspondingly inapplicable. No duty rested upon the respondent under section 18 of the shipping act to protect the direct service rates shown in such tariff as against the higher joint rates via its line and the Clyde Steamship Company, nor does it follow that because the rates charged exceeded the rates shown in such tariff the former were unjust and unreasonable.

According due consideration to all the facts and circumstances of record, the board concludes and decides that the rates charged have not been shown in violation of section 18 of the shipping act, 1916, as alleged. The complaint is accordingly dismissed.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 28th day of December, 1927

Formal Complaint Docket No. 41

I. C. Helmly Furniture Company *v.* Merchants and Miners Transportation Company

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation having been had, and the board having on the date hereof made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and attached;

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

By the Board.

[SEAL.]

(Sgd.)

SAMUEL GOODACRE,

Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 34

BILTMORE FLOORING COMPANY AND CARR LUMBER
COMPANY

v.

LAKE GILTEDGE STEAMSHIP COMPANY, LAKE TREBA
STEAMSHIP COMPANY, RICHARD WALSH OF MOBILE,
AND MOBILE LINERS, INC.

Submitted December 19, 1927. Decided January 24, 1928

Rates on hardwood flooring from Mobile, Ala., to Tampa, Fla., not shown unjust
or unreasonable. Complaint dismissed

Burton G. Henson for complainants.

Pillans, Cowley & Gresham for respondents.

REPORT OF THE BOARD

Tentative report in substantial conformity with the following was served upon the parties in accordance with the board's rules of practice. Exceptions filed by the complainants and respondents' answer thereto have been duly considered.

Complainants are E. N. Whitmire, trading as the Biltmore Flooring Company, engaged in the purchase and sale of flooring and other lumber, with principal place of business at Tampa, Fla., and the Carr Lumber Company, engaged in the manufacture and sale of lumber at Pisgah Forest, N. C.

Respondent Lake Giltedge Steamship Company, present owner of the S. S. *Lake Giltedge*, hereinafter called the "*Lake Giltedge*," and respondent Lake Treba Steamship Company, present owner of the S. S. *Lake Treba*, hereinafter called the "*Lake Treba*," are Alabama corporations. They and respondent Richard Walsh, of Mobile, Ala., identified as former owner of both steamships, were engaged as common carriers in the transportation by water of freight between the ports of Mobile and Tampa at the time the shipments involved

in this controversy were made. Respondent Mobile Liners, Inc., a corporation engaged in business as steamship agent and forwarder at Mobile, Ala., acted as agent for the other respondents.

By complaint filed under section 22 of the shipping act, 1916, it is alleged that on two shipments of hardwood flooring from Mobile to Tampa in December, 1925, and January, 1926, complainants were subjected to the payment of unjust and unreasonable rates in violation of section 18 of the shipping act. The board is requested to effect a discontinuance of such alleged violation, to prescribe a just and reasonable maximum rate for the future, and to award reparation.

The commodity involved was maple and oak kiln-dried tongue-and-groove hardwood flooring. It was shipped in lengths of from 2 to 16 feet, in bundles; was a manufactured article, but not painted, varnished, or stained. It was thirteen-sixteenths of an inch thick and varied from $1\frac{1}{2}$ to $2\frac{1}{4}$ inches in width.

The first shipment upon which reparation is sought left Mobile on December 12, 1925, in the *Lake Giltedge*, arriving at Tampa on December 16, 1925. It consisted of 15,265 bundles of oak flooring measuring 190,377 board feet and weighing 369,500 pounds. The second shipment left Mobile in the *Lake Treba* on January 9, 1926, arriving at Tampa on January 12, 1926, and consisted of 22,263 bundles of oak flooring and 2,543 bundles of maple flooring, measuring 303,133 board feet and weighing 523,120 pounds. Freight charges were assessed on the basis of 65 cents per 100 pounds and \$16 per thousand feet, respectively. The weight per thousand feet of the *Lake Giltedge* shipment was 1,940 pounds, whereas that of the *Lake Treba* shipment was 1,720 pounds per thousand feet. This difference in weight was due to the fact that the flooring carried on the *Lake Giltedge* was $2\frac{1}{4}$ inches in width, while that carried on the *Lake Treba* varied from $1\frac{1}{2}$ to $2\frac{1}{4}$ inches.

Evidence of the complainants is that on shipments of flooring from New Orleans and Philadelphia to Tampa, and from Mobile to Miami, lower rates than those attacked were charged, and that on April 21, 1926, the respondents quoted a rate on flooring of 35 cents per 100 pounds from Mobile to Tampa. While the disparity between the rates on the shipments from New Orleans, Mobile, and Philadelphia and the rates here under attack is recognized by the respondents, objection to the use of such comparison is made on the grounds, among others, that the lower rates were charged by different carriers under different operating conditions and from different points of shipment; and that in at least one instance the lower rate was pursuant to prior booking. The respondents' quotation of a rate of 35 cents from Mobile to Tampa on April 21, 1926, it appears, was made

in soliciting light cargo to fill space. No shipments are shown to have been carried by the respondents at this rate.

Transportation conditions in Florida during the latter part of 1925 and the first part of 1926 are developed upon the record in this case to have been abnormal, due to enormous demand for materials caused by the gigantic growth of the State at that time. The congestion was so great that the Florida rail carriers, in September, 1925, placed embargoes against movements to the city of Tampa and these were followed in October by a State-wide embargo which remained effective on everything but foodstuffs, medicines, etc., until May 17, 1926. The municipal wharf at Tampa, the terminal used by respondents, was so congested that freight had to be piled on the sand and in the streets, where it remained for a considerable period before removal by consignees. Witness for the complainants as well as respondents testified that unprecedented building operations in Florida and higher wages paid by builders during the period involved in this case had the effect of enticing labor away from the water as well as the rail lines, thereby causing increased labor costs. Respondents show that prior to the congested period the cost of discharging a vessel averaged from 60 cents to 75 cents a ton, and during the congestion from \$2 to \$2.50 per ton. Respondents also show that because of the congested condition of Tampa Harbor, vessels which ordinarily took 5 days to unload and depart averaged at least 15 days, and that the turn-around on the particular trips involved here was 11 days for the *Lake Treba* and 19 days for the *Lake Giltedge*. Whereas these two ships during normal times would average two round trips per month between Mobile and Tampa, including unloading at the latter point as well as other points in the vicinity of Tampa, during the period involved only one trip per month could be made.

At the time of shipment of the complainants' flooring here concerned, its value is shown to have been from \$30 to \$135 per 1,000 feet, or approximately \$15 to \$20 higher than its value during normal market conditions. The average rate charged was \$14.31 per 1,000 feet, or less than the \$15 rate on pine, of which latter commodity there is shown to have been a heavy movement. Prior to the congestion the rate on pine was \$8 per 1,000 feet. According to the record a ton of hardwood flooring will stow in a space of 95 to 110 cubic feet, whereas pine lumber requires only from 65 to 70 cubic feet. In other words, a ton of pine lumber stows in about 65 per cent of the space required for a ton of flooring. Hardwood flooring is brittle and greater care is required in handling it than in handling pine and other common lumber. Its movement from Pisgah Forest via Mobile is shown to have been unusual, and it appears that the sporadic shipments involved in this case would have moved all-rail to Tampa had such a movement not been embargoed.

The respondents further show that the rates on flooring assailed in this proceeding produced less revenue than the rates between the same points on other commodities such as cement, iron and steel articles, lime, and wall plaster.

According due consideration to all the facts and evidence of record, the board concludes and decides that the rates assailed have not been shown unjust or unreasonable in violation of section 18 of the statute, as alleged. The complaint will be dismissed and an order entered accordingly.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 24th day of January, 1928

• Formal Complaint Docket No. 34

Biltmore Flooring Company and Carr Lumber Company v. Lake Giltedge Steamship Company, Lake Treba Steamship Company, Richard Walsh of Mobile, and Mobile Liners, 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 having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and attached:

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

By the board.

[SEAL.]

(Sgd.)

SAMUEL GOODACRE,

Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 29

MUIR-SMITH MOTOR COMPANY

v.

GREAT LAKES TRANSIT CORPORATION

DOCKET No. 32

RUSSELL S. SHERMAN, INC.

v.

GREAT LAKES TRANSIT CORPORATION

Submitted November 21, 1927. Decided January 31, 1928

Rates charged on automobiles from Detroit, Mich., to Duluth, Minn., in excess
of maximum rates on file

*McCabe and Clure and T. H. Trelford, for complainants.
Mayer, Meyer, Austrian & Platt, for respondent.*

REPORT OF THE BOARD

These two cases involved the same subject matter, were heard together, and will be disposed of in one report. Tentative report in substantial accord with the following was duly served upon the parties, and exceptions and answer thereto have been considered at length.

The complainants are Minnesota corporations engaged as dealers in automobiles at Duluth. Respondent is a New York corporation engaged as a common carrier upon regular routes from port to port

on the Great Lakes, and as such is subject to regulatory provisions of the shipping act, 1916. The complainants allege that upon shipments of automobiles transported from Detroit, Mich., to Duluth, Minn., during the period June 27, 1923, to November 20, 1924, the respondent charged rates which were illegal, unjust, and unreasonable in violation of section 18 of the shipping act. The evidence of the complainants was confined, however, to the issue of illegality, i. e., whether under a correct interpretation of the carrier's tariffs the rates charged were in excess of the maximum rates on file. The alternative application note out of which this question of interpretation arose has since been removed by the respondent from its tariff covering shipments of automobiles from Detroit to Duluth. Rates will be stated in cents per 100 pounds and in dollars per automobile.

During the period in which complainants' shipments moved respondent carrier had in effect its local class and commodity tariffs S. B. 12 and S. B. 19, governed by official classification except as otherwise provided therein. By such official classification the rating assigned "Automobiles, passenger, loose or in packages, carload, minimum weight 10,000 pounds, subject to rule 34," was 110 per cent of first class. This applied to carrier's tariffs made a rate of 93 cents. The rating provided for "Automobiles, freight, S. U., loose or in packages, carload, minimum weight 12,000 pounds, subject to rule 34," was second class, which applied to carrier's tariffs made a rate of 72 cents. Specific maximum any-quantity commodity rates in dollars per machine were also published in said tariffs ranging from \$35 to \$60. The maximum commodity rate of \$35 published in respondent's tariff S. B. 12 was assessed upon each automobile involved in Docket 29. Commodity rates lower than the maximum commodity rates contained in respondent's tariffs were assessed on the shipments involved in Docket 32, as follows: Passenger automobiles, \$27.50; trucks having a wheel base between 139 and 146 inches, \$45.50; and trucks having a wheel base between 147 and 168 inches, \$50.50. Such lower rates were quoted by the carrier to the automobile trade on May 3, 1924.

It is contended on behalf of the complainants that under a correct interpretation of the respondent's tariffs class rather than commodity rates should have been applied to the shipments here in controversy, and that since such shipments equaled or exceeded in weight the carload minima required under the classification of 10,000 and 12,000 pounds,¹ flat carload rate of 93 cents should have been applied to passenger automobiles and to mixed shipments of passenger automobiles and trucks, and a flat carload rate of 72 cents to trucks. It is urged that these class rates were the carrier's applicable maximum

¹ Except 2 shipments of 5,346 and 9,167 pounds, respectively.

rates, that the rates charged were in excess thereof, and that reparation in the amount of the difference is due.

Respondent carrier's tariffs provided that "Whenever a carload (or less-than-carload) commodity rate is established it removes the application of the class rate on that commodity." No question would have been presented, therefore, but that the commodity rates were applicable, except for a note published under the particular commodity description on automobiles reading "*Wherever the official classification basis makes a lower charge than on basis of commodity rates, class rates will apply.*" Of pertinence in this connection, rule 34 of the official classification, in part, provides that:

When articles subject to the provisions of this rule are loaded in or on cars 36 feet 6 inches or less in length, they shall be charged at the minimum carload weights specified therefor in the separate descriptions of articles. * * * Weight in excess of the minimum weight provided for in this rule must be charged for.

Relative to the above rule, the following provision termed an "addition" is made thereto in each of the respondent's tariffs involved in the instant complaint proceeding:

On all carload shipments delivered to docks, other than those delivered in cars, destined to Lake ports and subject to rule 34 of the official classification, the minimum weight provided in the official classification for cars 36 feet 6 inches in length will be applied,² unless actual weight of consignment is greater when charges based on the actual weight will be assessed.

On behalf of the respondent it is admitted that if lower charges could have been arrived at by the application of the official classification basis than on the basis of commodity rates the former would have governed. But, the respondent contends, the proper method of calculating the rates upon official classification basis under the alternative tariff note hereinbefore quoted, to ascertain if they made lower than the commodity basis, was, to use the words of the respondent's brief, as follows: "If there were four machines in the shipment, respondent calculated the official classification basis upon *two full minimum carloads* and in the case of a greater number of units, respondent assumed that number of minimum carloads which would be produced by dividing the number of automobiles by two, applied the carload rate thereto *and the commodity rate to the extra machine, if any.*" This method of calculation, it is urged by the respondent, was justified, first, in that rule 34 of the official classification heretofore quoted was applicable to the instant shipments; and, secondly, because the word "consignment" contained in the tariff addition to

² The minimum weights thus provided by the official classification for passenger automobiles and trucks were 10,000 and 12,000 pounds, respectively.

rule 34 heretofore quoted meant the number of passenger automobiles or trucks which could be loaded in a freight car 36 feet 6 inches in length.

CONCLUSIONS, DECISION, AND FINDINGS

By its express provision rule 34 of the official classification related to shipments "loaded in or on cars." In and of itself it was therefore in no respect applicable to port-to-port shipments by water such as here concerned. Only by means of the tariff addition did that rule have any application to such shipments. According to the respondent it "intended to permit complainants and all other shippers to have the benefit of official classification when such basis made lower than the commodity rate," and

in order to afford that opportunity it became necessary to *specify the size of the hypothetical car* which would be considered in connection with rule 34. *This was done by the addition to rule 34*, and respondent stands ready to observe that addition to rule 34 as a part of official classification in every instance that it makes lower than the commodity basis.

It is manifest, however, that the sole function of the addition, as expressed by its language, was to prescribe a method of determining the minimum carload weights applicable to port-to-port shipments by water, which, if they had moved via rail, would have been subject to official classification rule 34. In this connection the phrase "subject to rule 34" contained in the addition was merely descriptive and can not be considered, as collaterally urged by the respondent, to have "specifically made" official classification rule 34 in and of itself, without the tariff addition, "applicable to port-to-port shipments by water." The respondent's further contention that the word "consignment" in the addition was to be interpreted to mean no more than the portion of a shipment which could have been loaded in a hypothetical freight car or cars 36 feet 6 inches in length rather than to the aggregate or total shipment is likewise not sustained by the language used. That word and its context permits of no other interpretation than as requiring the application of the carload rate to all excess weight of shipment over the carload minimum weight.

By the alternative note of the respondent's tariffs S. B. 12 and S. B. 19 reading, "Wherever the official classification basis makes a lower charge than on basis of commodity rates, class rates will apply," calculation of charges as respects shipments here concerned upon official classification basis correctly interpreted³ made class rates as applied to the entire weight of shipment the maximum rates on file. As charges exacted on shipments evidenced of record were

³ Rule 10 and substituted rule 15 apply.

higher than such maximum rates, the respondent must be held to have charged in excess of its maximum rates on file, and the board so concludes and decides.

The board finds that the complainants were the consignees of shipments herein concerned who paid rates thereon in excess of the respondent's maximum rates as herein determined. The board further finds that as to such of said shipments on which rates were paid within two years prior to the filing of sworn complaint with the board the complainants have been injured in the amount of the difference between the rates paid and the respondent's said maximum rates, and are entitled to reparation in that amount with interest at 6 per cent per annum. As the exact amount of reparation can not be calculated upon the record, the complainants and the respondent carrier are directed to comply with Rule XXI of the board's Rules of Practice. Upon receipt of statement in compliance with that rule, the board will consider the entry of award of reparation.

1 U. S. S. B.

UNITED STATES SHIPPING BOARD

DOCKET No. 39

BONNELL ELECTRIC MANUFACTURING COMPANY

v.

PACIFIC STEAMSHIP COMPANY

Submitted January 31, 1928. Decided March 6, 1928

Rate on iron pipe and iron pipe elbows New York to Miami not shown unjust or unreasonable as alleged.

Thomas C. Ringgold for complainant.

T. J. Kehoe and F. A. Steele for respondent.

REPORT OF THE BOARD

The complainant, Bonnell Electric Manufacturing Company, is engaged in business in New York City in the manufacture and sale of cast-iron pipe and cable fittings used for electrical purposes. The respondent, Pacific Steamship Company, at the time here involved operated one vessel on regular route between New York, N. Y., and Miami, Fla., and was subject to the shipping act, 1916.

By complaint filed on May 24, 1927, under section 22 of said act, it is alleged that on a shipment of iron pipe and elbows made by complainant in March, 1926, from New York to Miami, respondent's rate of \$2.50 per one hundred pounds was unjust and unreasonable, in violation of section 18 of the shipping act. The board is requested to award reparation.

The shipment involved was invoiced to the Miami consignee at \$1,047.81 f. a. s. New York. In making settlement of this invoice, the consignee deducted \$293.61, the difference between the freight it paid the respondent on this shipment and the freight it presumably would have paid had the complainant made shipment via the Clyde Steamship Company, also operating a service from New York to Miami. Shortly thereafter the consignee went out of business, and complainant has never been able to recover any part of the \$293.61 deduction.

About this same time the complainant made other f. a. s. shipments from New York to another consignee in Miami via the respondent's line and at the \$2.50 rate. The invoices for these shipments were not subjected to deduction. It is indicated that not until notice of deduction in connection with the shipment here involved was the complainant aware of the difference between the rates of the two carriers.

The only evidence adduced by the complainant in support of its allegation that the rate of \$2.50 was unjust and unreasonable is the fact that the Clyde Steamship Company had in effect at that time a rate of 73 cents.

In defense of the reasonableness of the rate attacked, the respondent carrier sets forth the peculiar character of the service performed and relates at length the extraordinary expense incurred by it, both in establishing the service and in operating. Its one steamer in the service, the *H. F. Alexander*, was primarily a passenger and perishable-cargo vessel, and maintained a schedule of from 46 to 48 hours from New York to Miami. It was put into the New York-Miami trade in October, 1925, to meet the demands then incident to the Florida boom, and was removed in May, 1926. The respondent stresses that time was a prime factor when the complainant's shipment was carried, and that the schedule of the Clyde Line from New York to Miami was around 85 hours in contrast with the *H. F. Alexander's* 48 hours or less. The \$2.50 rate assailed by the complainant in this case was the respondent's second-class rate shown in its tariff duly on file with the Shipping Board and open to public inspection in accordance with section 18 of the shipping act and the board's tariff regulations.

An allegation that a rate is unjust and unreasonable puts the burden of proving such unjustness and unreasonableness upon the complainant. This burden is not sustained in the instant case. Unjustness and unreasonableness of a given rate is not proved by merely showing that a lower rate existed over the line of another carrier. Upon the record, therefore, the complaint will be dismissed, and an order entered accordingly.

UNITED STATES SHIPPING BOARD

DOCKET No. 38

THOMAS G. CROWE, TRADING AS THOMAS G. CROWE & COMPANY, DAVID POTTASH, TRADING AS PENN WASTE COMPANY, OSCAR SMITH & SONS COMPANY, AND THOMAS M. GLUYAS COMPANY

v.

SOUTHERN STEAMSHIP COMPANY

DOCKET No. 43

BOSTON EXCELSIOR COMPANY, HARRY SCHIMMEL, DAVID POTTASH, TRADING AS PENN WASTE COMPANY, AND OSCAR SMITH & SONS COMPANY

v.

MALLORY STEAMSHIP COMPANY AND SOUTHERN STEAMSHIP COMPANY

Submitted February 21, 1929. Decided March 12, 1929

Rates on cotton linters and/or cottonseed hull fibre or shavings from Galveston to New York and from Houston to Philadelphia not shown to be in violation of Shipping Act, 1916, as alleged. Complaints dismissed.

Oberg & Gililland and Frank B. Blocksom for complainants.

M. Hampton Todd, Robert G. Erskine, J. T. Green, and T. A. O'Brien for respondents.

REPORT OF THE BOARD

These two complaints were heard together and will be considered in one report.

The complaint in Docket 38 is filed on behalf of Thomas G. Crowe, trading as Thomas G. Crowe & Company; David Pottash, trading as Penn Waste Company; Oscar Smith & Sons Company; and

Thomas M. Gluyas Company. The complaint in Docket 43 is filed on behalf of David Pottash, trading as Penn Waste Company; Oscar Smith & Sons Company, the Boston Excelsior Company, and Harry Schimmel. The complainants are all dealers in cotton and/or cotton products. The respondent in Docket 38 is the Southern Steamship Company, a common carrier operating from Houston to Philadelphia, and as such subject to the provisions of the shipping act, 1916. The respondents in Docket 43 are the Southern Steamship Company and the Mallory Steamship Company, the latter a common carrier by water from Galveston to New York, and as such subject to the shipping act.

The complaint in Docket 38 alleges that on certain shipments of cotton linters in compressed bales the respondent charged a rate of 55 cents per one hundred pounds, said rate being the rate for cotton linters in uncompressed bales, and that the rate of 55 cents was inapplicable, unlawful, illegal, unduly and unreasonably prejudicial, and unjust and unreasonable in violation of sections 16 and 18 of the shipping act.

The complaint in Docket 43 alleges violations of the same nature in respect to cotton linters and also cottonseed-hull fiber or shavings. The further allegation is made that certain shipments described on the bills of lading as cottonseed-hull fiber or shavings were actually linters and entitled to a lower linters rate.

In each of these complaints the board is asked to require respondents to cease these alleged violations, to award reparation, and to fix lawful, nonprejudicial, just, and reasonable maximum rates for the future.

The complainants seek primarily to prove that the bales of cotton linters and bales of cottonseed-hull fiber or shavings involved were compressed, although customarily described on the bills of lading as uncompressed. They present evidence indicating that all the linters and/or cottonseed-hull fiber or shavings covered by the complaints were actually compressed to an average density of about 15 pounds per cubic foot. This compression was effected at cottonseed-oil mills. Only occasionally, except for export trade, do these commodities move through a regular cotton press, which effects a compression of twenty-two and a half pounds.

The complainants base their contention that the compressed rate should have been charged on the fact that the tariffs in naming the rates on compressed and uncompressed bales contain no definition or qualification of the term "compressed." They argue that in the absence of such definition or qualification in the tariff the existence of "reasonable" compression required the charging of the compressed rate. They urge that tariffs must be construed according

to their language, and that the intent of the framers is not controlling.

In defense of the rates assessed, the respondents show trade custom, usage, or understanding of the word "compressed" in connection with linters and cottonseed-hull fiber or shavings. They introduce considerable evidence to the effect that a bale of linters or shavings as it comes from an oil mill is known to the trade as an uncompressed bale and that only when it has been put through a commercial press, where a density of twenty-two and a half pounds is received, is it known as a compressed bale. The respondents also put in evidence a photostatic copy of a letter written by one of the main witnesses for the complainants, a witness who was qualified by the complainants as an expert. It is sufficient to quote the third paragraph of this letter:

Of course, I know to a cotton man, a compressed bale is one which has gone through a compress station and there compressed to a density of about 22½ lbs. per cubic foot. There is, too, the high-density bale which is of higher density. Freight shipments, however, are rated according to freight tariffs, and here is the crux in the situation.

It is true that tariffs must be construed strictly and that wherever they are ambiguous the doubt should be resolved against the carrier. Nevertheless, a fair and reasonable construction must be given. The terms in question must be construed in the sense in which they are generally understood and accepted commercially. Shippers can not be permitted to avail themselves of a strained and unnatural construction. In this case the trade custom is clearly shown. The complainants' interpretation of the tariff is constricted.

On the issue of unjustness and unreasonableness of the rates charged, the complainants exhibit rates assessed by the respondents on a number of commodities alleged by the complainants to be similar to cotton linters and cottonseed-hull fiber or shavings. In connection with this exhibit a witness for the complainants testifies that a number of these commodities occupy more space per pound than cotton linters or shavings, although moving at lower rates. The complainants also question the reasonableness of the rates on uncompressed bales of linters and hull fiber or shavings as compared with the rates on compressed bales. The respondents show, however, that other factors than space occupied, such as the degree of competition and the value of the commodity, enter into steamship rate making. With respect to the comparison of the compressed rate with the uncompressed rate, they further show that two compressed bales can be loaded in approximately the same space required for one uncompressed bale, and that in other trades uncompressed linters are customarily charged twice the rate on compressed linters. Upon the

record the complainants' burden of proof of unjustness and unreasonableness is clearly not sustained.

Respecting the secondary contention of the complainants in Docket 43, that certain shipments described on the bills of lading as cottonseed-hull fiber or shavings were entitled to the lower linters rate, the complainants confine themselves to showing that fiber or shavings and linters are of the same general nature. Admittedly such is the fact, but there is, nevertheless, as shown by the evidence, a recognized distinction between them. Nothing is adduced on behalf of the complainants which in any manner warrants a conclusion that the rate charged on the several shipments of fiber or shavings involved was unlawful.

After consideration of the record, including complainants' exceptions, we conclude and decide that the rates assailed have not been shown in violation of either section 16 or section 18 of the shipping act, 1916, as alleged. We accordingly enter an order dismissing both complaints.

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 12th day of March, 1929

Formal Complaint Docket No. 38

Thomas G. Crowe et al. v. Southern Steamship Company

Formal Complaint Docket No. 43

Boston Excelsior Company v. Mallory Steamship Company and Southern Steamship Company

The above-entitled formal complaints being at issue, and having been duly heard and submitted by the parties, and full investigation of each having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and attached; it is *Ordered*, That the said complaints be, and they are hereby, dismissed.

By the board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 46

EVERETT CHAMBER OF COMMERCE AND BELLINGHAM
CHAMBER OF COMMERCE

v.

LUCKENBACH STEAMSHIP CO., DOLLAR STEAMSHIP
LINE, ARROW LINE, AMERICAN-HAWAIIAN STEAM-
SHIP CO., PANAMA PACIFIC LINE, MUNSON-McCOR-
MICK LINE, CALIFORNIA & EASTERN STEAMSHIP
CO., OCEAN TRANSPORT CO. (INC.), QUAKER LINE,
TRANSMARINE LINES, WILLIAMS STEAMSHIP CO.

Submitted June 21, 1929. Decided September 11, 1929

Respondents' rule applying arbitraries of 12½ cents per 100 pounds to Everett and 15 cents per 100 pounds to Bellingham, Olympia, and Astoria not shown to subject said ports to undue and unreasonable disadvantage in violation of section 16 of the shipping act, as alleged. Complaint dismissed.

Williams & Davis, Walter B. Whitcomb, Ralph L. Shepherd, George F. Yantis, and W. H. Nelson for complainants and interveners.

Herman Phleger, Roscoe H. Hupper, and William J. Dean for respondents.

REPORT OF THE BOARD

The complainants, Everett Chamber of Commerce and Bellingham Chamber of Commerce, are associations of merchants, professional men, and residents of the cities of Everett and Bellingham, Washington. The respondents are all engaged as common carriers by water on regular routes between ports of the Atlantic coast and ports of the Pacific coast, and as such are subject to the shipping Act, 1916. As members of the so-called United States Intercostal Conference, they are governed with respect to the matter concerned herein by tariff of that conference known as Westbound Minimum Rate List No. 4. Two of these carriers (Luckenbach Steamship

Co. and Transmarine Lines) also operate between the Gulf coast and the Pacific coast; but, although the complaint alleges violation of the law regarding these operations, no attempt is made to sustain such allegations.

The complaint attacks the rules and regulations of the respondents, which provide specified higher rates for cargo destined to Everett and Bellingham than for cargo destined to Seattle and Tacoma. The allegation is made that in this respect these rules and regulations subject Everett and Bellingham to undue and unreasonable disadvantage in violation of section 16 of the shipping act.

By intervention, the port of Astoria alleges that the same rules and regulations, which assess cargo destined to Astoria, Oregon, a specified higher rate than cargo destined to Portland, Oregon, subject Astoria to undue and unreasonable disadvantage in violation of section 16 of the shipping act. Other interveners are the port of Olympia and the Olympia Chamber of Commerce, who allege similar violation with respect to Olympia, Washington, as compared with Seattle and Tacoma.

The rules and regulations in question provide that the Pacific coast ports of Seattle, Tacoma, Portland, Alameda, Los Angeles Harbor, San Francisco, and Oakland shall be known as terminal ports, and that cargo destined to those ports shall be assessed so-called terminal rates whether the carrier effects delivery from the Atlantic coast by discharging there direct or by transshipment. All other Pacific coast ports, including Everett, Bellingham, Olympia, and Astoria, are classified by the rules and regulations assailed as nonterminal ports, and, except as to Port San Diego, cargo destined to each of such ports is assessed an arbitrary amount over and above the terminal rate whether the respondent carrier effects delivery by calling with its own steamer or by transshipment. At Port San Diego terminal rates apply whenever the steamer of the respondent actually calls to discharge. If the respondents tranship the cargo to San Diego an arbitrary of 30 cents per hundred pounds is charged. The arbitraries assessed against the complaining ports are as follows:

	Cents per hundred pounds .
Everett.....	12½
Bellingham.....	15
Olympia.....	15
Astoria.....	15

The board is asked to order the respondents to remove the alleged undue and unreasonable disadvantage by ordering the cancellation of these arbitraries against these cities, thereby giving them terminal rates. The complainants and interveners argue that inasmuch as

the respondent carriers give the ports of Seattle, Tacoma, and Portland terminal rates not only when they effect delivery themselves, but even when they tranship the cargo at San Francisco they should do likewise with Everett, Bellingham, Olympia, and Astoria. They show that the length of haul from the Atlantic coast to Everett and Bellingham is slightly less than to Seattle and Tacoma; and that the length of haul to Astoria is slightly less than to Portland. Olympia, however, is a somewhat longer haul than any of the other ports involved. All four complaining ports are accorded the same rates via transcontinental railroads as Seattle, Tacoma, and Portland, and are represented by witnesses as being logical distributing centers for extensive and rapidly developing adjacent territory. All four cities, it is shown, have excellent harbor facilities and a substantial aggregate tonnage movement through their harbors.

The complainants and interveners urge that in determining whether or not their ports should be given terminal rates on the westbound intercoastal service, the respondent carriers should consider the eastbound intercoastal tonnage as well as the westbound. They also stress that the rule of the respondents governing shipments to Port San Diego assesses an arbitrary only when the respondents do not effect delivery direct but make transshipment. They argue that even if terminal rates are not given their cities when the cargo is transhipped they should at least be accorded the same treatment as Port San Diego and receive the advantage of the terminal rate whenever a vessel of the respondent does call and unloads. Some of the respondents, it is shown, frequently call at one or more of the nonterminal ports involved for the purpose of picking up eastbound cargo.

In defense of the rules and regulations imposing these arbitraries, the respondents direct attention to the lack of volume of tonnage moving over their lines to the complaining ports. For illustration, during the year ended August 31, 1928, the total tonnage both transhipped and direct carried by the respondents was as follows:

	Tons
Everett	457
Bellingham	1,749
Olympia	47
Astoria	246

In reference to the special rule for Port San Diego, the respondents show that during the same period they carried 22,319 tons destined to that port. The respondents show also that the instances in which cargo destined to the terminal ports of Seattle, Tacoma, and Portland is transhipped are relatively few. Two of the respondents¹ do not call either to load or unload north of San Francisco.

¹ Panama Pacific Line and Dollar Steamship Line.

¹ U. S. S. B.

In order to compete with such carriers as do proceed northward, these two carriers take cargo on the Atlantic coast for the northern terminal ports, tranship it at San Francisco over a Pacific coastwise line, and charge for the through movement the same rates as do the respondent carriers whose vessels actually touch the northern terminal ports. In the same manner they compete with the other carriers by taking cargo for Everett, Bellingham, Olympia, and Astoria, tranship it at San Francisco, and charge the same rates for the through movement as the respondent carriers operating to ports north of San Francisco.

CONCLUSIONS AND DECISION

Volume of traffic is undeniably a prime factor in constructing water transportation rates. As shown above, the total amount of freight moved in a year to all four complaining ports in all the vessels of the eleven respondents was only 2,499 tons. Nothing of evidence warrants the conclusion that the assessment of the specified arbitraries on the traffic to the four ports has resulted in materially reducing volume or that their removal would substantially increase it. In the instant case, justification for the respondents' arbitraries under attack manifestly lies in the small amount of freight moving to the complaining ports. Due to its lack of volume, practically all of the westbound tonnage carried by the respondents for the four complaining ports is transhipped at one of the northern terminal ports. And even when a vessel of the respondents calls at one of these four nonterminal ports in order to load cargo eastbound, such cargo as that vessel may have brought westbound for that nonterminal port is usually transhipped at a terminal port. As shown by the respondents, the transhipment is a matter of practical necessity in order that their westbound operation may be completed before their eastbound operation begins. It is of course normally an important consideration to the carriers to have their vessels bare of cargo before starting to load for the eastbound voyage.

The contention urged on behalf of the complaining ports that at least they are subjected to undue and unreasonable disadvantage by the arbitraries assailed when any of the respondents' vessels discharge direct is not persuasive in view of the infrequency of direct discharge and the negligible amount of cargo so delivered.² Nor is there support for the further contention that the specified arbitraries on the cargo for Everett, Bellingham, Olympia, and Astoria transhipped at San Francisco by the respondents Panama Pacific and Dollar Lines subject them to undue and unreasonable disadvan-

² In the case of Olympia the 47 tons carried for that port during the 12-month period ending Aug. 31, 1928, was all transhipped.

tage, in view of the slight amount of such cargo³ and the practical competitive conditions involved which these two respondents have to meet in order to participate in the carriage of the northbound traffic.

The complaining ports are extended the same rates as the terminal ports on cargo loaded there by the respondents for their eastbound voyage. This cargo consists almost entirely of lumber, pulp, and canned goods. The position of the complainants and interveners that since this eastbound cargo is substantial in amount the carriers should be required to treat them as terminal ports as to the inconsiderable westbound cargo is untenable. The respondents' custom of separating for rate-making purposes their westbound from their eastbound operations is defensible in view of the recognized dissimilarity of operating conditions in the eastbound and westbound trades.

Upon consideration of all the facts, argument, and exceptions of record, we conclude and decide that in the instant proceeding the respondents have not been shown to subject the complainants and interveners to undue and unreasonable disadvantage in violation of section 16 of the shipping act, 1916, as alleged. An order of dismissal will be accordingly entered.

³ For the 12-month period ending Aug. 31, 1928, Everett and Bellingham cargo transhipped at San Francisco amounted to only 88 and 194 tons, respectively.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 11th day of September, 1929

Formal Complaint Docket No. 46

Everett Chamber of Commerce and Bellingham Chamber of Commerce *v.* Luckenbach Steamship Co., Dollar Steamship Line, Arrow Line, American-Hawaiian Steamship Co., Panama Pacific Line, Munson-McCormick Line, California & Eastern Steamship Co., Ocean Transport Co. (Inc.), Quaker Line, Transmarine Lines, Williams Steamship Co.

This case being at issue upon complaint, answer and intervening petitions on file, and having been duly heard and submitted by the parties, and full investigation having been had, and the board on the date hereof having made and filed a report containing its conclusions and decision thereon that the violation alleged has not been shown, which said report is hereby referred to and attached; it is

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

By the board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,
Secretary.

DOCKET No. 47

BOARD OF COMMISSIONERS OF THE LAKE CHARLES
HARBOR AND TERMINAL DISTRICT

v.

THE NEW YORK & PORTO RICO STEAMSHIP COMPANY

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

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

E. R. Kaufman and *A. A. Nelson* for complainant.

A. Pace for Lake Charles Rice Milling Co., intervener.

Roscoe H. Hupper for respondent.

Carl Giessow for New Orleans Joint Traffic Bureau, intervener.

REPORT OF THE BOARD

By complaint the Board of Commissioners of the Lake Charles (La.) Harbor & Terminal District allege that in connection with shipments of clean rice originating at interior Louisiana points¹ destined Porto Rico the respondent the New York & Porto Rico Steamship Co. violates sections 16 and 18 of the shipping act, 1916. The gravamen of the complaint is that in respect to such shipments the respondent charges for transportation from New Orleans to Porto Rico rates which when added to the rail rates from the points of origin to New Orleans make the total rate from point of origin to destination as low and in some cases lower than the through rate via Lake Charles, thereby inducing movement of clean rice through New Orleans rather than through Lake Charles. This practice, it

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

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

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

	Lake Charles		New Orleans	
	Miles	Rate	Miles	Rate
Jennings.....	33.8	16	185.0	23
Mermentau.....	38.7	17	180.1	23
Crowley.....	52.3	19	166.5	23
Iota.....	54.8	19	185.4	23
Rayne.....	58.8	19½	160.0	23
Gueydan.....	55.1	19½	170.9	23
Kaplan.....	70.0	20½	156.0	23
Abbeville.....	79.0	22	147.0	23
New Iberia.....	93.2	23	125.6	23
Average.....	59.5	19½	164.0	23

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

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

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

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

CONCLUSIONS AND DECISION

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

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

1 U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 11th day of September, 1929

Formal Complaint Docket No. 47

Board of Commissioners of the Lake Charles Harbor & Terminal District v.
The New York & Porto Rico Steamship Co.

This case being at issue upon complaint, answer and intervening petitions on file, and having been duly heard and submitted by the parties, and full investigation having been had, and the board having on the date hereof made and filed a report containing its conclusions and decision thereon that the violations alleged have not been shown, which said report is hereby referred to and attached; it is

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

By the board.

[SEAL.]

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

FORMAL COMPLAINT DOCKET No. 50

ISAAC S. HELLER

EASTERN STEAMSHIP LINES, INCORPORATED

Submitted July 3, 1929. Decided September 18, 1929

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

Isaac S. Heller for complainant.

Arthur J. Santry for respondent.

REPORT OF THE BOARD

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

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

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

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

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

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

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

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

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

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

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

Upon consideration of the facts of record in this proceeding, the board concludes and decides that the rates of the Eastern Steamship Lines (Inc.), here concerned, for transportation of automobiles accompanied by passengers from New York to Portland, Me., and from Boston to New York, have not been shown to be unjust or unreasonable in violation of section 18 of the shipping act, 1916, as alleged. The complaint will be dismissed and an order entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 18th day of September, 1929

Formal Complaint Docket No. 50

Isaac S. Heller v. Eastern Steamship Lines, Inc.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon that the violation alleged has not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

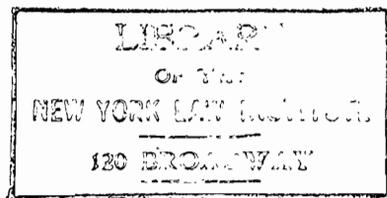
Ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the board.

(Signed)

SAMUEL GOODACRE,
Secretary.

[SEAL.]



UNITED STATES SHIPPING BOARD

DOCKET No. 45

ASSOCIATED JOBBERS AND MANUFACTURERS

v.

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

Submitted November 1, 1929. Decided December 4, 1929

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

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

REPORT OF THE BOARD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"That it shall be unlawful for any common carrier by water, or other person subject to this act, either alone or in conjunction with any other person, directly or indirectly, to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

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

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

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

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

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

An appropriate order for the future will be entered.

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

ORDER

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

Formal Complaint Docket No. 45

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

This case being at issue upon complaint, answers and intervening petitions on file, and having been duly heard and submitted by the parties, and full investigation having been had, and the board on the date hereof having made and filed a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof; now, therefore, it is

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

By the board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 52

THE GELFAND MANUFACTURING COMPANY

v.

BULL STEAMSHIP LINE, INC.

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

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

Abner Pollack for complainant.

Hunt, Hill & Betts for respondent.

REPORT OF THE BOARD

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

The complainant alleges that on less-than-carload shipments of its product mayonnaise, a salad dressing, in glass containers packed in boxes, from Baltimore to Tampa, the respondent's rate of \$1.351 $\frac{1}{2}$ per 100 pounds charged and paid was and is in excess of the respondent's applicable maximum rate on file with the board, in violation of section 18 of the shipping act. The board is requested to award reparation, including interest.

The respondent's tariff naming class and commodity maximum rates applicable to its service from Baltimore to Tampa¹ provides a less-than-carload maximum commodity rate on canned goods of 74 cents per 100 pounds. Such tariff further provides that this rate shall apply on canned goods as described by item 15 of the tariff, which item includes salad dressing. In relation to a number of articles described by this item, including salad dressing, no restriction is made as to the kind of receptacle in which such articles shall be contained. The complainant's contention is that, in view of the

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

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

Much of the respondent's defense is directed toward an endeavor to show that the term "canned goods" means only goods in tin cans; and dictionary definitions are presented, including among others² definitions from the 1890 edition of Webster of canned goods as "a general name for fruit, vegetables, meat, or fish, preserved in hermetically sealed cans," and the 1923 edition of that dictionary of "canned" as "preserves in cans, as canned goods." Examination discloses, however, that the latter edition defines the word "can" as "a vessel or case, tin; also, U. S., glass or earthenware jar." Of pertinence in this connection also are the definitions in other and more current dictionaries of canned goods as "prepared meat, vegetables, fish, fruit, etc., hermetically sealed in suitable receptacles, as cans, glasses, etc."³; and of "can" to include "a glass or earthenware jar used in preserving food."⁴

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

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

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

³ Funk & Wagnalls' New Standard (1928).

⁴ Webster's New International (1926).

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

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

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

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

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

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

UNITED STATES SHIPPING BOARD

DOCKET No. 55

UNITED STATES PIPE AND FOUNDRY COMPANY

v.

TAMPA INTER-OCEAN STEAMSHIP COMPANY AND
KERR STEAMSHIP COMPANY

Submitted May 1, 1930. Decided May 7, 1930

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

J. K. Hiltner for complainant.

Ira A. Campbell and *Roger B. Siddall* for respondents.

REPORT OF THE BOARD

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

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

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

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

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

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

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

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

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

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

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

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

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

1 U. S. S. B.

ORDER

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

Formal Complaint Docket No. 55

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

Whereas this case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision upon the evidence as presented and of record, which report is hereby referred to and made a part hereof: Now, therefore, it is

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

By the board.

[SEAL.]

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 51

FOREIGN TRADE BUREAU, NEW ORLEANS ASSOCIATION
OF COMMERCE

v.

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

Submitted April 10, 1930. Decided May 14, 1930

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

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

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

REPORT OF THE BOARD

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

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

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

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

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

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

1. U. S. S. B.

	1926	1927	1928
	<i>Feet</i>	<i>Feet</i>	<i>Feet</i>
Lake Charles.....	12,364,000	158,164	2,054,925
Gulfport.....	116,850,000	20,788,000	19,872,000
New Orleans.....		132,200,000	155,922,000

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

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

Apart from the subject of diversion, the bulk of the evidence submitted by the complainant is concerned with a description of port facilities and physical conditions at New Orleans, and with indicating that 2¹ of the 39 respondents named would already have adopted the practice of taking hardwood lumber direct from car to ship, regardless of the other respondents, were it not that such independent action would probably have led to a rate war.

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

¹ Leyland Line and Leyland-Harrison Steamship Line.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. U. S. S. B.

ORDER

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

Formal Complaint Docket No. 51

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

Whereas this case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision upon the evidence as presented and of record, which report is hereby referred to and made a part hereof; now, therefore, it is

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

By the board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 32

RUSSELL S. SHERMAN, INC.

v.

GREAT LAKES TRANSIT CORPORATION

Submitted May 16, 1930. Decided June 4, 1930

McCabe & Clure for complainant.

Mayer, Meyer, Austrian & Platt for respondent.

SUPPLEMENTAL REPORT OF THE BOARD

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

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

1 U. S. S. B.

ORDER

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

Formal Complaint No. 32

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

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

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

By the board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,

Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 54

EASTERN GUIDE TRADING COMPANY

v.

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

Submitted May 17, 1930. Decided June 11, 1930

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

G. O. Apikian for complainant.

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

REPORT OF THE BOARD

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

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

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

The rate of the respondents from New York to Constantinople under attack is \$18 per ton of 40 cubic feet¹ or 45 cents per cubic foot, amounting to approximately \$40.50 per piano. Asserting that in view of foreign competition there is no possibility of it exporting used pianos from New York to Constantinople or to Beirut at this rate, the complainant urges that the board reduce the amount of such rate to substantially the level of the rate of indirect transshipment, carriers furnishing service from New York to Constantinople and Beirut via Hamburg. This indirect or transshipment rate is approximately 35 cents per cubic foot, or per piano, boxed and measuring about 90 cubic feet, \$31.50. If transshipment were made at Marseille, complainant states the through freight per piano would be \$34.30. The price to the complainant's foreign customer of a reconditioned, used piano, the complainant asserts, is \$45 and of a used piano not reconditioned, \$25. Freight charges are additional. The complainant shows that the respondents' rate under attack is applicable to either used or new pianos.

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

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

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

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

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

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

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

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

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

1 U. S. S. B.

ORDER

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

Formal Complaint Docket No. 54

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

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon that the violation alleged has not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 56

LEE ROY MYERS COMPANY

v.

MERCHANTS & MINERS TRANSPORTATION COMPANY

Submitted May 23, 1930. Decided June 4, 1930

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

Thomas E. Grady & Company, Inc., for complainant.

H. P. Willmer and Frank W. Gwathmey for respondent.

REPORT OF THE BOARD

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

The complainant alleges that between the dates of August 23, 1927, and August 31, 1928, it caused to be transported via the respondent carrier's line various shipments of empty tin cans ranging in weights from 3,669 to 5,264 pounds, from Baltimore, Md., to Savannah, Ga., and that the freight charges assessed and paid on basis of the first-class rate of 99 cents¹ per 100 pounds applicable to tin cans in less-than-carload quantity lots, instead of on basis of the respondent's carload quantity rate on tin cans of 34 cents per 100 pounds, minimum weight 10,000 pounds, were in excess of the maximum rate on file with the board, in violation of section 18 of the shipping act. In support of this allegation complainant relies on rule 15 of the southern classification governing the respondent's tariff which provides that charges on a less-carload quantity shipment shall not exceed the charges on the same shipment on basis of the carload

¹ \$1 after Jan. 15, 1928.

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

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

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

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

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

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

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

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

ORDER

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

Formal Complaint Docket No. 58

Lee Roy Myers Company v. Merchants & Miners Transportation Company

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions, decision and findings of fact, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

Docket No. 60

ATLAS WASTE MANUFACTURING CO.

v.

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

Submitted December 10, 1930. Decided January 14, 1931

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

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

REPORT OF THE BOARD

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

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

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

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

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

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

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

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

ORDER

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

Formal Complaint Docket No. 60

Atlas Waste Manufacturing Co. v. The New York & Porto Rico Steamship Co.,
and Bull Insular Line, Inc.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon that the violation alleged has not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

[SEAL.]

(Sgd.)

SAMUEL GOODACRE,

Secretary.

UNITED STATES SHIPPING BOARD

Docket No. 45

ASSOCIATED JOBBERS AND MANUFACTURERS

v.

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

Submitted December 16, 1930. Decided January 14, 1931

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

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

REPORT OF THE BOARD

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

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

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

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

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

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

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

When a vessel leaves the Atlantic Coast, stowage plans are forwarded to the carriers' agents at the Pacific Coast ports of call showing where the cargo for each port is stowed in the vessel. These agents at the Pacific Coast ports also receive copies of the manifests. The stowage plan does not show each shipment separately but is a rough plan of the vessel, and by colors or other designation indicates the location of the cargo for each of the different ports of discharge. The manifest specifies each shipment for each destination, and freight bills, delivery orders, and arrival notices are made up therefrom. A copy of this manifest is also furnished the Pacific Port Service Corporation, which organization operates at all Pacific Coast ports, furnishing supervisory and clerical service on the docks, for which it charges the steamship company a flat rate per ton of cargo based upon cost plus profit. Copy of the stowage plan is sent to the stevedore under contract with the steamship company to discharge the ship. The cargo is usually taken out of the ship in full slingload lots without regard to consignee, and is then by the stevedores, under the direction of the Pacific Port Service Corporation, assorted on the dock in piles² arranged according to consignee. When a shipment is finally removed from the dock by the consignee a clerk of the Pacific Port Service Corporation checks it out. Packages are counted, numbers on cases are verified against corresponding numbers on bills of lading, and a receipt taken.

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

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

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

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

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

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

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

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

extra labor and expense at Pacific Coast ports due to the making of split deliveries between such ports. Among them is specific admission by witness for the petitioners, under cross-examination, that at Los Angeles⁵ there is just as much work and expense involved in connection with a segment of a carload quantity shipment split delivered between ports as there is with a less-carload shipment of the same weight.⁶

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

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

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

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

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

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

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

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

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

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

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

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

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

Argument on behalf of the Isthmian line upon exception that the adjustment here prescribed is not justified because it "represents the total out-of-pocket cost of stevedoring" of that carrier is without point. As established by the evidence, the stevedoring rates paid by this carrier are from \$1.90 to \$2.05 per ton⁹ according to port, or from 9½ cents to 10¼ cents per 100 pounds. These rates are arrived at by the stevedores by lumping the carrier's solid, split and less-carload cargo, and are therefore averaged rates. Similarly as in the case of supervisory and clerical cost, and as in this report heretofore recognized, the amount of such averaged rates or cost to the carrier for stevedoring is substantially greater by reason of the greater service and time incident to handling carload quantity cargo split delivered between ports than to carload quantity cargo delivered solid to one consignee at one port. Further, as is amply apparent from the foregoing report, the adjustment prescribed is not predicated upon the factor of stevedoring alone. From a review of all of the evidence produced at the hearing and rehearing, and of the exceptions and argument presented, we are convinced that the adjustment here prescribed and ordered fairly reflects as to each of the respondents, including the petitioners, the change necessary to remove the undue and unreasonable prejudice and preference complained of in this proceeding and determined by us to exist.

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

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

ORDER

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

Formal Complaint Docket No. 45

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

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

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

By the Board.

[SEAL.]

(Sgd.)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

Docket No. 62

YORK COUNTY CIGAR MANUFACTURERS' ASSOCIATION

v.

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

Submitted December 19, 1930. Decided January 14, 1931

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

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

REPORT OF THE BOARD

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

delphia and thence by water to Pacific Coast ports. The respondents' carload quantity rates on cigars from all Atlantic Coast ports served to the Pacific Coast are \$1.75 per 100 pounds, minimum weight 24,000 pounds, and \$2.25 per 100 pounds for less-than-carload quantities. For the carriage of cigarettes from Atlantic to Pacific Coast ports the respondents maintain rates of \$1.25¹ per 100 pounds for carload quantities, minimum weight 24,000 pounds, and \$2 per 100 pounds for less-than-carload quantities. In view of the respondents' said rates on cigarettes and their rates on a number of other commodities, the complainants and intervener allege the respondents' rates on cigars are unjust and unreasonable in violation of Section 18 of the Shipping Act. The complainants and intervener further allege that the respondents' rates on cigarettes are unduly and unreasonably preferential and advantageous, and that as shippers of cigars they are subjected to undue and unreasonable prejudice and disadvantage, in violation of Section 16 of said Act.

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

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

¹ Minimum weight 24,000 pounds.

² Minimum weight 24,000 pounds.

³ Minimum weight 12,000 pounds.

⁴ Minimum weight 10,000 pounds.

⁵ Minimum weight 10,000 pounds.

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

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

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

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

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

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

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

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

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

1 U. S. S. B.

ORDER

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

Formal Complaint Docket No. 62

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

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon that the violations alleged have not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,

Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 61

R. A. ASCHER & COMPANY

v.

INTERNATIONAL FREIGHTING CORPORATION

Submitted March 12, 1931. Decided March 31, 1931

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

A. Welles Stump for complainant.

Cletus Keating and Roger B. Siddall for respondent.

REPORT OF THE BOARD

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

¹ Oct. 31, 1929, and Mar. 27, 1930.

The foreign competitors referred to in the complaint are exporters who ship from the United Kingdom to Buenos Aires. The complaint alleges that these foreign competitors can transport scrap iron to Buenos Aires "at a freight and loading rate equivalent to \$6.75 in United States currency." This allegation the respondent denies in its answer, and at the hearing the complainant confines itself on this point to the unsupported statement of a member of the complaining firm that at the time its shipments moved "British and European suppliers" of scrap iron had a freight rate to Buenos Aires of 27 shillings and 9 pence, or approximately \$6.75. As evidence of the current rate from London to Buenos Aires the complainant submits a cabled quotation from the Blue Star Line of 30 shillings (approximately \$7.29), which rate the respondent confirms is correct. Witness for the complainant also states that "as a matter of fact I do know that another steamship broker has quoted by cable, arrived here this morning, a freight rate of \$3.90 in American money." The distance from New York to Buenos Aires² is somewhat less than the distance from London to Buenos Aires. The rate of approximately \$7.29 quoted complainant by the Blue Star Line is for a 20-day passage. The \$8 rate of the respondent covers a passage of 24 days.

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

² 5,871 nautical miles.

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

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

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

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

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

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

ORDER

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

Formal Complaint Docket No. 61

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

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon that the violation alleged has not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

Formal Investigation Docket No. 68

IN RE THAMES RIVER LINE, INC.

Submitted June 18, 1931. Decided July 28, 1931

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

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

REPORT OF THE BOARD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

bodies of water of an extent which can not be measured by the unaided vision, and which are navigable at all times in all directions, and border on different nations or States or people, and find their outlet in the ocean as in the present case, are seas in fact, however they may be designated,

and—

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

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

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

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

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

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

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

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

We see no ground upon which the assertions on behalf of the respondent in this regard are or can be justified, and, as reference to paragraph 3 of Section 18 shows, the ten-day notice is not applicable to reductions in rates; nor is such notice in any case required by the Board. Moreover, the other carriers engaged in comparable interstate transportation on Long Island Sound that have voluntarily and without question for the past decade or more filed their tariffs of maximum rates, fares, and charges with the Board⁴ have apparently experienced no such result as feared by the respondent.

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

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

1 U. S. S. B.

ORDER

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

Formal Investigation Docket No. 68

In re Thames River Line, Inc.

This proceeding being at issue pursuant to resolution of the Board on file and served, and having been duly heard, and full investigation of the matter and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof; it is

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

By the Board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

Formal Investigation Docket No. 74

IN RE BALTIMORE-NEW YORK STEAMSHIP COMPANY

Submitted July 13, 1931. Decided August 4, 1931

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

Janney, Ober & Williams and Frederic Weiss for respondent.

REPORT OF THE BOARD

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

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

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

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

* S. S. "Comanche."

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

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

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

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

ORDER

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

Formal Investigation Docket No. 74

In re Baltimore-New York Steamship Company

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

Whereas, full investigation of the matters and things involved having been had, and the Board having on the date hereof made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,

Secretary.

UNITED STATES SHIPPING BOARD

Formal Investigation Docket No. 65

IN RE BAYSIDE STEAMSHIP COMPANY

Submitted July 17, 1931. Decided August 19, 1931

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

Stephen L. Whipple for respondent.

REPORT OF THE BOARD

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

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

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

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

¹ S. S. "Yellowstone."

1-U S. S. B.

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

1 U. S. S. B.

ORDER

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

Formal investigation Docket No. 65

In re Bayside Steamship Company

This proceeding instituted by the Board under authority of Section 22 of the Shipping Act, 1916, being at issue, and having been duly heard, and full investigation of the matter and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

Formal Investigation Docket No. 70

IN RE NORTH PACIFIC STEAMSHIP LINE

Submitted July 17, 1931. Decided August 19, 1931

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

William Gissler, for respondent.

REPORT OF THE BOARD

Pursuant to the requirements of Section 18 of the Shipping Act and the Board's Tariff Regulations promulgated under authority of that section, the respondent carrier concerned in this case filed with the Board a tariff naming its maximum commodity and class rates. In connection with the class rates set forth therein the tariff purported to be "governed by Western Classification," although at no time did the respondent have filed for it¹ the classification necessary to an ascertainment of what articles of commerce the respective class rates applied. In short, the respondent's tariff, although furnishing to the Board the maximum rates applicable to shipments carried by it on commodity bases, in no manner supplied information as to which of the maximum class rates was applicable to any given cargo. In so far as it was engaged in transportation of property at class rates the respondent thus apparently failed to comply with Section 18 of the statute and the pertinent rule of the Board's Tariff Regulations having application.

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

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

At the hearing before one of the Board's examiners the respondent was represented by a witness identifying himself as respondent's sole owner and operator, who upon oath testified that the North Pacific Steamship Line is a trade name which he has adopted and under which he conducts a freight transportation service north from San Francisco to the Port of Grays Harbor—i. e., Aberdeen and Hoquiam, Washington. The one vessel at the present time used by the North Pacific Steamship Line in such service² is owned by the A. P. Johnson Lumber Company with which vessel owner the respondent has an arrangement "in the nature of a charter." Sailing by the respondent North Pacific Steamship Line from San Francisco is made approximately every 21 days. On the return southbound voyages the vessel is utilized exclusively by the owning lumber company in the transportation of its own lumber, the respondent having nothing to do therewith. By paid advertisement and by solicitation the North Pacific Steamship Line holds itself out to the public as a common carrier of freight from San Francisco to Aberdeen and Hoquiam, and issues bills of lading under such name exclusively on all shipments received and carried. The payment of claims for loss and damage to cargo is as to the shipper the responsibility of the North Pacific Steamship Line, although, the witness asserts, the lumber company owning the vessel is as respects such claims in turn responsible to the North Pacific Steamship Line and carries claim insurance. The vessel owner furnishes crew and fuel, the operator of the North Pacific Steamship Line paying to the owner 95 per cent of the freight moneys received by him from shippers, less advertising and other incidental charges.

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

² S. S. Esther Johnson.

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

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

1 U. S. S. B.

ORDER

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

Formal Investigation Docket No. 70

In re North Pacific Steamship Line

This proceeding instituted by the Board under authority of Section 22 of the Shipping Act, 1916, being at issue, and having been duly heard, and full investigation of the matter and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,

Secretary.

UNITED STATES SHIPPING BOARD

Formal Investigation, Docket No. 66

IN RE COAST STEAMSHIP COMPANY

Submitted September 15, 1931. Decided October 14, 1931

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

Sanborn, Roehl & Brookman and A. J. Houde for respondent.

REPORT OF THE BOARD

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

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

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

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

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

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

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

ORDER

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

Formal Investigation Docket No. 66

In re Coast Steamship Company

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

Whereas full investigation of the matters and things involved having been had, and the Board having on the date hereof made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

Docket No. 75

LESEM BACH & COMPANY

v.

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

Submitted January 11, 1932. Decided February 10, 1932

Upon complainant's petition, proceeding discontinued

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

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

REPORT OF THE BOARD

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

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

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

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

Subsequent to the hearing it appears the parties voluntarily adjusted and fully settled the controversy. Such adjustment and settlement is evidenced by statement in affidavit¹ filed of record with the Board by the complainant, and in such affidavit the complainant formally requests the Board in the premises to discontinue the instant proceeding, and to enter an order of discontinuance thereof.

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

¹ Dated January 7, 1932.

1 U. S. S. B.

ORDER

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

Formal Complaint Docket No. 75

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

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

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

By the Board.

[SEAL.]

(Signed)

SAMUEL GOODACRE,

Secretary.

UNITED STATES SHIPPING BOARD

Investigation Docket No. 78

IN RE MARGINAL TRACK DELIVERY

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

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

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

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

REPORT OF THE BOARD

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

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

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

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

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

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

This Conference hereby defines Shiplside Delivery at all U. S. Gulf ports covered by the Conference Agreement on Heavy and Light Hardwoods (as classified in Tariff), Redwood, Oak Planks and Rails, Flooring (common), Flooring (Parquetry), Veneers, Billets, etc. (as classified in Tariff), and any other commodities which may be subsequently agreed upon by the Conference, as follows:

(1) Wharf delivery: Piled on wharf (in transit shed) for convenient tallying in ship's berth constructively within reach of ship's tackle, or:

(2) Marginal track delivery: In cars on marginal tracks, alongside steamers' loading berth.

² Except Hansa and Strachan Lines.

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

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

This practice is to be effective March 1, 1932.

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

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

(1) Wharf delivery.....	.30
(2) Marginal track delivery.....	.31½

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

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

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

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

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

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

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

and concludes with the request that—

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

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

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

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

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

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

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

1 U. S. S. B.

RESOLUTION

OF UNITED STATES SHIPPING BOARD, FEBRUARY 16, 1932

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

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

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

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

1 U. S. B.

ORDER

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

In re marginal track delivery

Investigation Docket No. 78

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

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

By the Board.

(Signed)

SAMUEL GOODACRE,

Secretary.

[SEAL.]

UNITED STATES SHIPPING BOARD

Docket No. 72

THE ATLANTIC REFINING COMPANY

v.

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

Submitted November 22, 1932. Decided December 14, 1932

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

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

REPORT OF THE BOARD

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

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

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

1 U. S. S. B.

Date	Atlantic rate	Date	Vacuum rate
	<i>Per case</i>		<i>Per case</i>
July 1, 1924-June 30, 1925.....	\$0.32½	Oct. 1, 1923-Sept. 30, 1924.....	\$0.27½
July 1, 1925-Sept. 30, 1925.....	.33½	Oct. 1, 1924-Sept. 30, 1925.....	.27½
Oct. 1, 1925-Sept. 30, 1926.....	.32	Oct. 1, 1925-Sept. 30, 1926.....	.26¼
Oct. 1, 1926-Sept. 30, 1927.....	.32	Oct. 1, 1926-Sept. 30, 1927.....	.26¼
Oct. 1, 1927-Sept. 30, 1928.....	.32	Oct. 1, 1927-Sept. 30, 1928.....	.26¼
Oct. 1, 1928-Sept. 30, 1930.....	.32	Oct. 1, 1928-Sept. 30, 1930.....	.26¼

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

In defense of a differential in favor of Vacuum shipments out of New York, the respondents set forth certain dissimilarities between the shipments of the Vacuum and the Atlantic, both as to volume and regularity of movement; and allege further a fundamental and controlling difference in services which they are called upon to perform, in that the Vacuum delivers its shipments at the steamer's regular general cargo berth in New York, while the Atlantic cargo for the most part is taken by the carriers at the Atlantic's private dock in Philadelphia, a port at which the respondents claim there is available no substantial amount of general cargo¹ to South Africa.

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

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

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

Point Breeze, Philadelphia, where the Atlantic's private dock is located, is on the Schuylkill River approximately $3\frac{1}{8}$ miles from the point where that river empties into the Delaware River. It is about 85 miles from the ocean. The nearest general cargo pier to the ocean at Philadelphia is on the Delaware River approximately $4\frac{1}{4}$ miles above the junction point of the Schuylkill and Delaware Rivers, and therefore about the same distance from the ocean, but in a different direction, as the Atlantic dock at Point Breeze. The furthestmost pier from the ocean in general use at Philadelphia is on the Delaware River about nine miles above the mouth of the Schuylkill. During the reparation period all but one of the Atlantic shipments out of Philadelphia were taken from the Point Breeze dock. The one exception moved on a vessel which made Philadelphia its final port of loading and arrived there with a deep draft. The Schuylkill River at that time had a depth of only about 22 feet at low water with a range of tides from four to six feet,⁴ and it was thought best not to bring this loaded vessel up to Point Breeze.

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

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

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

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

The Atlantic charges carriers who take cargo from the Point Breeze dock one cent a net registered ton per day wharfage, which in the customary wharfage charge assessed by refineries, and compares with a charge at the Philadelphia public wharves of two cents a net registered ton per day. Wharfage charges at New York are acknowledged by the respondents to be substantially in excess of the rate charged at Point Breeze. In some instances the respondents use piers at New York under lease by their agents at contract rates not offered in evidence. In addition to their agency fees these agents assess the carriers using the piers widely varying wharfage charges. One of the respondents, however, uses a pier owned by the City of New York at which the city's "legal wharfage rate" of $3\frac{1}{2}$ cents per net registered ton per day is charged.

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

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

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

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

The respondents submit in evidence an exhibit showing the South African tonnage moving out of Philadelphia and New York during the fiscal years ending June 30, 1929, and June 30, 1930, segregated as to petroleum and general cargo. The complainant submits an exhibit showing Philadelphia and New York exports and imports in the South African trade without segregation as to nature of cargo. The following tabulation is compiled from the data so furnished, corrected for certain minor errors by reference to the source material⁶ from which both exhibits were constructed and of which source material it was stipulated the Board would take judicial notice:

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS AND DECISION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

Formal Complaint Docket No. 72

Atlantic Refining Company v. Ellerman & Bucknall Steamship Co. Ltd., et al.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon that the violations alleged have not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

(Signed)

SAMUEL GOODACRE,
Secretary.

[SEAL.]

UNITED STATES SHIPPING BOARD

Docket No. 73

FIR-TEX INSULATING BOARD COMPANY

v.

LUCKENBACH STEAMSHIP CO., INC.

Submitted December 27, 1932. Decided January 25, 1933

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

Shelby Wiggins for complainant.

A. M. Stevenson for respondent.

REPORT OF THE BOARD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An order dismissing the complaint will be entered.

ORDER

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

Formal Complaint Docket No. 73

Fir-Tex Insulating Board Company v. Luckenbach Steamship Co., Inc.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon that the violations alleged have not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

(Sgd.) SAMUEL GOODACRE,
Secretary.

(SEAL.)

UNITED STATES SHIPPING BOARD

Investigation Docket No. 84

DOLLAR STEAMSHIP LINES, INCORPORATED, LIMITED

v.

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

Submitted March 6, 1933. Decided March 23, 1933

Complaining carrier admitted to conference. Proceeding discontinued

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

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

Lillick, Olson and Graham for Nippon Yusen Kabushiki Kaisha.

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

REPORT OF THE BOARD

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

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

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

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

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

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

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

1 U. S. S. B.

ORDER

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

Investigation Docket No. 84

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

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

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

By the Board.

(SEAL)

(Sgd.) SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

Docket No. 81

IN RE: RATES IN CANADIAN CURRENCY

Submitted April 25, 1933. Decided May 18, 1933

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

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

REPORT OF THE BOARD

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

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

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

1 U.S.S.B.

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

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

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

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

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

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

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

	<i>Cents</i>
August 1931.....	99. 6898
September 1931.....	96. 2476
October 1931.....	89. 1025
November 1931.....	88. 9914
December 1931.....	82. 7064
January 1932.....	85. 1301
February 1932.....	87. 2936
March 1932.....	89. 4530
April 1932.....	89. 8808
May 1932.....	88. 4430
June 1932.....	86. 7427
July 1932.....	87. 0658
August 1932.....	87. 5513
September 1932.....	90. 2636
October 1932.....	91. 2332
November 1932.....	87. 3000
December 1932.....	86. 5989
January 1933.....	87. 4600
February 1933.....	83. 5084
March 1933.....	83. 5205
April 1933.....	86. 4300

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

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

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

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

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

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

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

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

There are no "open" rate commodities⁴ in either the Pacific-Dutch East Indies Conference or the Pacific-Straits Conference; but in the Pacific Westbound Conference lumber and flour, as well as a few other commodities, are open to a number of ports because of competitive conditions, such as the use by shippers of chartered tonnage and the existence of nonconference lines. In the trades covered by this latter conference the principal commodities moving from Canada which compete with the same commodities moving from the United States are flour, wheat, lumber, and logs, all of which frequently move in large quantities and in chartered tonnage. Among the users of chartered tonnage is one of the large shippers who testified at the hearing against the carriers. Although it is clear that in quoting rates on these open items the carriers are guided largely by competitive conditions, it was testified on behalf of some of the carriers that they were endeavoring to collect higher "dollar" rates out of Canada than out of the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX

Pacific Coast-Australasian Tariff Bureau Agreement No. 50

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

Pacific Westbound Agreement No. 57

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

Pacific Dutch East Indies Agreement No. 162

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

Pacific-Straits Agreement No. 143

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

North Atlantic United Kingdom Freight Agreement No. 16

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

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

North Atlantic Continental Freight Agreement No. 48

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

North Atlantic Spanish Agreement No. 138

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

North Atlantic Baltic Freight Agreement No. 147

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

North Atlantic-French Atlantic Agreement No. 409

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

UNITED STATES SHIPPING BOARD REPORTS

North Atlantic/West Coast of Italy Agreement No. 65

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

Adriatic, Black Sea, and Levant Agreement No. 133

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

1 U.S.S.B.

ORDER

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

In re Rates in Canadian Currency

Docket No. 81

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

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

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

By the Board.

[SEAL]

(Signed) S. D. SCHELL,
Acting Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 80

THE W. T. RAWLEIGH CO.

v.

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

Submitted May 24, 1933. Decided July 6, 1933

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

A. W. Murray, for complainant.

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

REPORT OF THE BOARD

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

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

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

The carriers named respondent are engaged in transportation between the Netherlands East Indies and the United States. Except the Klaveness Line¹ they operate to and from United States Atlantic and/or Gulf ports and function in conference relation under an agreement dated Batavia, March 12, 1929, which agreement was approved by the Board under section 15 of the Shipping Act, 1916, on May 8, 1929. Modification thereof admitting the Bank Line into conference membership was approved by the Board on December 11, 1930.

The complaint is that as respects shipments of black Lampong pepper from the Netherlands East Indies to New York and New Orleans the respondents violated section 14, paragraphs 3 and 4, section 16, paragraphs 1 and 2, and sections 17 and 18² of the Shipping Act in that they charged the complainant a higher rate than the rate charged other shippers of black Lampong pepper for equivalent transportation service. The complaint sets forth prayer for award of \$50,000 reparation, and by stipulation filed at the hearing it is stated the difference of \$1,042.45³ between rates charged complainant and rates of other pepper shippers during the period November 28, 1931, to January 24, 1932, is the basis of computation of reparation, if any, to be allowed. This difference in rates is due to the maintenance by the carriers of a so-called "contract rate practice", under which those shippers who agree with the contracting carriers to furnish them all of their shipments over a given period not exceeding a year⁴ are accorded lower rates. Both the higher noncontract rates charged shippers who do not so agree and the lower or contract rates are duly shown in the carriers' tariff. The tariff also contains the express notation that when contracts exist between shippers and the lines, cargo will be accepted for shipment at the contract rates of freight shown in the tariff, and that in all other instances the noncontract rates of freight shown therein will apply.

The complainant's specific allegations⁴ are that the respondents have—

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

¹ Klaveness operates to and from United States Pacific Coast.

² Sec. 18 has application to carriers in interstate commerce only.

³ Except as respects 1 period of 14 months.

⁴ As reproduced in opening brief, p. 11.

exclusively, "or for any other reason" in violation of section 14' (third) of the Shipping Act, 1916.⁵

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

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

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

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

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

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

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

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

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

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

⁹ 748,422 pounds.

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

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

To further use complainant's language in this connection—

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

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

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

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

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

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

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

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

As support for its position that the respondents violated the stated regulatory provisions of the Shipping Act in assessing rates on its shipments higher than the rates assessed on shipments of contract shippers, the complainant urges for attention the decision of the Board in *Eden Mining Co. et al. v. Bluefields Fruit & Steamship Co.* (1 U.S.S.B. 41). As there disclosed, however, a single carrier sought by contracts with shippers to monopolize the trade by preventing use of the vessels of any other carrier over a period of 3 years. Shippers were permitted no choice of carriers, and participation by other regular carriers in the contracts was neither provided for nor contemplated. Also, in the case referred to, the lower rates to contract shippers on cargo transported from New Orleans to Bluefields, Nicaragua, were conditioned upon the shippers exclusively patronizing the carrier with all of their shipments¹¹ not only from New Orleans to Bluefields but from all of the carrier's Nicaraguan ports of call to New Orleans.¹² Moreover, there was no assurance against increase of rates at any time without notice.

In the instant proceeding the contract shippers were afforded by the terms of the contracts the services of at least 11 different carriers operating regularly in the trade at the time complainant's shipments moved, including not only the 10 conference members but also a nonconference line, the Isthmian line, the only other line regularly in the trade. Furthermore, according to the record, had any other regular carrier entered the trade it would have been eligible for admission to membership in the conference¹³ and to partic-

¹¹ Except mahogany and other native woods from Nicaragua.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

Formal Complaint Docket No. 80

The W. T. Rawleigh Company v. N. V. Stoomvaart Maatschappij "Nederland"
et al.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon that the violations alleged have not been shown, which said report is hereby referred to and made a part hereof: Now, therefore, it is

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

By the Board.

[SEAL]

SAMUEL GOODACRE,
Secretary.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 116

PASSENGER CLASSIFICATIONS AND FARES AMERICAN
LINE STEAMSHIP CORPORATION

Submitted February 12, 1934. Decided March 2, 1934

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

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

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

REPORT OF THE DEPARTMENT

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

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

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

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

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

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

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

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

DEVELOPMENT OF THE INTERCOASTAL PASSENGER SERVICE

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

The Grace Line in 1925 purchased from the Pacific Mail Steamship Co. the steamships *Colombia*, *Venezuela*, and *Ecuador* and the goodwill of that company, which had commenced direct intercoastal operations through the canal in 1921¹ with these three vessels designated as first class. These vessels were later replaced by the *Santa Ana*, *Santa Cecilia*, *Santa Teresa*, and *Santa Elisa*, which were operated as first class until the new Grace Line vessels were placed in the trade late in 1932 and early in 1933, when they were changed to cabin class.

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

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

INTERCOASTAL PASSENGER FARES

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

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

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

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

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

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

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

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

Respondent (two classes) : First class, \$225; tourist, \$120.
Grace Line (one class) : First class, \$240.²
Grace Line (one class) : Cabin class, \$145.
Dollar Line's 535's (two classes) : First class, \$200; tourist, \$120.
Dollar Line's 522's (one class) : First class, \$165.

PROPOSED CHANGES

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

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

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

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

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

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

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

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

INTERCOASTAL PASSENGER TRAFFIC

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

1932 traffic

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

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

TOTALS FOR EACH LINE

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

PERCENTAGE OF SPACE OCCUPIED

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

1933 traffic (11 months)

	West-bound			East-bound		
	Trips	First	Tourist	Trips	First	Tourist
Panama Pacific.....	23	1,461	2,634	22	1,117	2,735
Grace (first class).....	23	2,320	-----	22	2,272	-----
Grace (cabin ships).....	23	1,171	-----	22	1,240	-----
Dollar.....	48	1,745	1,874	21	525	754
Total.....	-----	6,897	3,508	-----	5,154	3,489

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

TOTALS FOR EACH LINE

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

PERCENTAGE OF SPACE OCCUPIED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

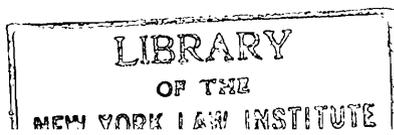
Referring to the allegation of the Grace Line that the suspended tariff will result in severe loss of revenue to it because of the reductions in fares that it claims will be necessary to maintain the existing differentials, it is sufficient to call attention to the fact that this estimate of probable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

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

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

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

1 U.S.S.B.B.



DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 115

SCHEDULES OF GIRDWOOD SHIPPING COMPANY

Submitted February 20, 1934. Decided March 15, 1934

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

Neil Burkinshaw for respondent.

Frank Lyon and *Elisha Hanson* for protestants.

Roscoe H. Hupper for members of United States Intercoastal Conference other than Nelson Steamship Co., and *F. W. S. Locke* for Nelson Steamship Co., interveners.

REPORT OF THE DEPARTMENT

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 100¹

OAKLAND MOTOR CAR CO. OF DULUTH, MINN.

v.

GREAT LAKES TRANSIT CORPORATION

Submitted February 2, 1934. Decided April 14, 1934

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

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

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

REPORT OF THE DEPARTMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Violations of section 18 of the Shipping Act, 1916, have been admitted, and complainants seek redress for injury resulting therefrom. If the absence of the seal is fatal, complainant's claims are barred and the carrier will be permitted to retain the amount of the overcharge collected to which it is not justly entitled. Under the circumstances of these cases such a ruling would result in a miscarriage of justice and is believed to be unwarranted. It is recognized as a general rule that remedial and procedural statutes are to be construed liberally with a view to the effective administration of justice. It has been held that a regulatory body, such as the Interstate Commerce Commission, ought not to be hampered in its proceedings by the hard and fast rules as to pleading and practice which govern courts of law, *Pennsylvania Railroad Co. v. United States*, 288 Fed. 88; that even when acting in a quasi-judicial capacity the strict rules which prevail in suits between private parties do not apply, and that inquiries should not be too narrowly constrained by technicalities. *Interstate Commerce Commission v. Baird*, 194 U.S. 25; *Interstate Commerce Commission v. Louisville and Nashville Railroad Co.*, 227 U.S. 88; *Spiller v. Atchison, Topeka and Santa Fe*, 253 U.S. 117. It has also been held that the Interstate Commerce Act should be liberally construed to advance the remedy and retard the wrong. *New York, New Haven & Hartford Rail-*
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road Co. v. Interstate Commerce Commission, 200 U.S. 361; *American Express Co. v. United States*, 212 U.S. 522, 533. This view is further expressed in *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 10, and *Farbwerke Vermals Meister Lucius and Bruning et al. v. Chemical Foundation, Inc.*, 283 U.S. 152, wherein it is stated that the law should be liberally construed to give effect to the purposes it was enacted to subserve. The shipping statutes administered by the Department closely parallel the Interstate Commerce Act and, therefore, should be similarly construed. *U.S. Navigation Co. v. Cunard S.S. Co., Ltd.*, 284 U.S. 474. It is found that complaints, sufficiently verified to warrant recognition as "sworn complaints" within the purposes of the statute, were filed within the statutory period, and that the claims presented therein are properly before the Department for action.

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

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

An appropriate order will be entered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 83¹

OAKLAND CHAMBER OF COMMERCE

v.

AMERICAN MAIL LINE, LTD., ET AL

Submitted February 26, 1934. Decided August 3, 1934

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

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

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

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

REPORT OF THE DEPARTMENT

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

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

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

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

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

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

<i>Vancouver</i>	<i>Victoria</i>
C. P. R. Docks	Rithet—Consolidated
Great Northern Docks—East and West side	Ogden Point
Terminal Dock and Warehouse Company	
Vancouver Harbor Commissioners' Docks, viz: Ballantyne Pier	
<i>Seattle</i>	<i>Tacoma</i>
Atlantic Street Terminal	Commercial Dock
East Waterway Dock	Port Commission Dock
Great Northern Docks (Smith's Cove) Pier 14	Shaffer Terminal No. 2 (Milwaukee Dock No. 1)
Port Commission Lenora Street Dock	
Port Commission (Smith's Cove, Piers 40 and 41)	
<i>Portland</i>	<i>Astoria</i>
Albers Dock No. 3	Port of Astoria Municipal Terminals
Municipal Terminals, 1 and 4	
Oceanic Terminals	
<i>San Francisco</i>	<i>Los Angeles Harbor</i>
State Board of Harbor Commissioners' Docks	(To be decided by the Southern District)

At regular terminal docks, lines may at their discretion call direct or absorb charges regardless of quantity.

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

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

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

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

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

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

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

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

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

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

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

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

1 U.S.S.B.

APPENDIX

MEMORANDUM OF DECISIONS, ITEM 100

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) *Loading Docks for Transshipment Cargo.*—Cargo for transshipment, which does not originate at first Carrier's dock, may be loaded by first Carrier's vessel at its regular loading dock and/or the terminal docks listed in Clause (L) in accordance with tariff, rules and conditions, but any cargo first Carrier's vessel may accept originating at its own loading dock shall be charged an additional \$1.00 per revenue ton, but cargo to be delivered at ship's tackle

without any expense to the Carrier. (In San Francisco ship's tackle shall mean place of rest on dock.)

(L) The authorized regular terminal docks at Conference Terminal Ports are as follows:

Vancouver

C.P.R. Docks, viz: Pier "B-C"
Great Northern Docks—East and
West Side
Terminal Dock and Warehouse Co.
Vancouver Harbor Commissioners'
Dock, Viz: Ballantyne Pier

Victoria

Rithet—Consolidated
Ogden Point

Seattle

East Waterways Dock
Great Northern Docks (Smith's
Cove)
Milwaukee Ocean Dock
Pier 14
Port Commission—Lenora Street Dock
Port Commission (Smith's Cove)
Pier 41

Tacoma

Commercial Dock
Milwaukee Dock No. 2
Port Commission Dock
Shaffer Terminal No. 2 (Milwaukee
Dock No. 1)

Portland

Albers Dock Berths No. 2 and 3
Municipal Terminals 1 and 4
Oceanic Terminals

Astoria

Port of Astoria Municipal Terminals

San Francisco

State Board of Harbor Commissioners'
Docks, Viz:
Pier 15
Pier 23
Pier 26
Pier 28
Pier 37
Pier 41
Pier 42
Pier 44
Pier 45
* Pier. 48

Los Angeles Harbor

Piers 152, 153, 154, 155
Pier 187
Pier 188
Pier 228—E
Pier 229—230—A
Pier 230—E
Municipal Pier 60
Pier 53
* Pier 232—E

* Shows Pier designated by Participating Carrier.

"NOTE.—If Carriers change their terminal docks they shall forthwith report such change to the District Secretary of the Conference."

1 U.S.S.B.B.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 138

IN THE MATTER OF GULF INTERCOASTAL
CONFERENCE AGREEMENT

Submitted July 21, 1934. Decided September 14, 1934

Withdrawal of approval to Gulf Intercoastal Conference Agreement found not justified. Petition denied.

Ira L. Ewers for petitioner.

Elisha Hanson and *Frank Lyon* for respondents.

REPORT OF THE DEPARTMENT

Petitioner, Nelson Steamship Company, is a common carrier by water in intercoastal commerce between Atlantic and Pacific Coast ports of the United States. Respondents, Luckenbach Gulf Steamship Co., Inc., Gulf Pacific Line, Swayne & Hoyt Ltd. (Managing Owners), and Gulf Pacific Mail Line Ltd., are common carriers by water and comprise the present membership of the Gulf Intercoastal Conference, a voluntary association to promote commerce between Gulf of Mexico and Pacific coast ports of the United States, under United States Shipping Board Bureau Agreement No. 2742, approved March 28, 1934. Petitioner alleges, in substance, that respondents have improperly and illegally refused it admission to the conference and that as respondents operate under contract rates it is impossible for it to obtain freight from shippers, parties to said contracts. The Department is requested under authority of Section 15 of the Shipping Act to withdraw its approval of Agreement No. 2742.

The agreement under consideration cancelled and superseded Conference Agreement No. 122, approved February 19, 1929. Paragraph 6 of the present agreement provides that any person, firm, or corporation engaged in the Gulf intercoastal trade may become a party to the agreement by consent of a majority of the parties thereto, and that such admission shall not be denied to any party except for just and reasonable cause. The agreement does not provide for admission to membership in the conference of parties not engaged in the Gulf intercoastal trade, and as at the time petitioner applied for membership it was not engaged in that trade, its right, if any, to membership is not specifically inured to it by the terms of the agreement.

Its application for membership was first denied by respondents on April 3, 1934, on the ground that there were then pending before this Department certain amendments to the agreement under consideration and on the further ground that there was more than sufficient tonnage in the trade to take care of cargo offerings. At the time of the application petitioner was a member of the United States Intercoastal Conference, the agreement of which provided that no vessel owned or controlled by any member thereof or by a parent, subsidiary, affiliated or associated company, or organization would be permitted by any of them to operate in any other branch of the intercoastal trade except in accordance with the rates, rules, and regulations prescribed under such conference agreement as covers such other branch of the intercoastal trade. The rates agreed upon by the present membership of the Gulf Intercoastal Conference do not vary according to the carrier performing the transportation service. The same rate is published and applies regardless of the service used. The agreement does not admit of pooling of revenues by the carriers. Respondents operate fortnightly but alternate their sailings and thus provide a weekly service. Although the application in question, or copy thereof, is not of record, the testimony of a representative of petitioner shows that when petitioner first took up negotiations to enter the conference it proposed to give monthly service and asked for either "a differential or a pool." The witness considered this to be "good trading." The Gulf Intercoastal Conference has been in existence for some years. No friction between the members thereof or dissatisfaction with the agreement on the part of shippers has come to the attention of the Department. To have acceded to the conditions which petitioner sought to impose would have resulted in radical changes of doubtful character in the structure of the conference.

The proposed amendments to Agreement No. 2742 in essence required any party seeking admission to the conference to make a showing that the requirements of the trade justified the additional service of the type offered by the applicant. The proposed amendments were disapproved by the Department on May 22, 1934. Thereafter petitioner renewed its application for membership in the conference. This time it offered to operate a fortnightly service and did not insist on its request for rates lower than those maintained by respondents or for a pooling of revenue in lieu of such lower rates. Respondents' letter of June 5, 1934, to the petitioner denied the renewed application "for just and reasonable causes in accordance with Paragraph Six (6) of Conference Agreement." At the hearing respondents enumerated their reasons for refusing petitioner admission in the conference. They stated petitioner is not engaged in the Gulf intercoastal trade and that the agreement was intended to include only carriers actually operating in that trade. Also that at present the carriers in that trade are furnishing ample service. In support of this they refer to a report of the Federal Coordinator of Transportation, transmitted on March 10, 1934, by the Chairman of the Interstate Commerce Commission to the Senate (Senate Document No. 152, 73d Congress, 2d Session), which states that the Gulf intercoastal traffic is well balanced, but the cargo tonnage is considerably less than could be handled by the present service, and that any increase in present frequency of service would not attract additional traffic. Respondents further stated that there are no serious demands for additional service, in spite of efforts by petitioner, who is said to have circularized the trade and asked shippers to insist upon additional facilities. Furthermore, the respondents stated, they have adequate facilities to take care of any normal increase in business that may develop. Emphasizing the request of petitioner in its first application for membership for either a pool or differential, respondents stated that they do not regard the petitioner "as a desirable applicant if the same methods are to be pursued in the Gulf Intercoastal Conference," as were followed while petitioner was a member of the United States Intercoastal Conference. No specific methods were testified to, but emphasis was laid upon the fact that as a member of that conference petitioner chose to operate only four of its fourteen vessels and thereby obtained a greater revenue from the pool provided by that conference. Rates lower on some commodities transported over the "B" lines than over the "A" lines and pooling of revenues by the carriers were characteristics of the agreement governing the United States Intercoastal Conference. Petitioner was a Class "B" line

during the last three months in 1932 and in the year 1933, and during this fifteen-month period petitioner contributed \$32,726.46 to the pool and received \$280,881.48 therefrom.

Petitioner's witness averred that petitioner could not operate in the Gulf-Pacific trade outside the conference because of the contract rate system employed by the conference members, stating that petitioner would be prevented from "enjoying the very heavy cargo that is contracted for." The witness, however, stated that he had only a general knowledge of the system, and could not explain how it operated. The contract rate system, although long in effect in this trade by the conference, is used only on westbound cargo and then only on certain commodities. The record does not disclose the volume of traffic moving under contracts. From time to time other ships than those controlled by the conference have operated in the trade, including some owned by petitioner and chartered by it to others. There is no showing that the existence of these contracts has prevented petitioner from operating in the trade outside the conference; nor has petitioner brought into issue the legality of the contracts, in which it seeks to share by becoming a conference member.

The evidence presented in this case does not support the finding requested by the petitioner. An order denying the petition will be entered.

1 U.S.S.B.B.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 139¹

INTERCOASTAL RATES OF NELSON STEAMSHIP
COMPANY

Submitted September 24, 1934. Decided November 27, 1934

Schedules proposing reductions in intercoastal rates of Nelson Steamship Company, Argonaut Steamship Line, Inc., Pacific Coast Direct Line, Inc. and Weyerhaeuser Steamship Company, except on iron and steel articles and eastbound lumber, found not justified. Suspended schedules ordered canceled and proceedings discontinued.

States Steamship Company having canceled and withdrawn proposed intercoastal rates and concurred in tariffs of Agent R. C. Thackara under special permission, proceeding discontinued.

Pacific-Atlantic Steamship Co. having canceled and withdrawn schedules proposing reductions in intercoastal rates under special permission, proceeding discontinued.

Proposed increases and reductions in westbound intercoastal rates of Shepard Steamship Company on various commodities, with exception of items 1068 and 1069A embracing certain reductions in the rates on milk of magnesia and face cream in straight or mixed carloads, justified.

Proposed exceptions to port equalization rule in westbound intercoastal tariff of American Line Steamship Corporation and Panama Mail Steamship Company found not justified. Suspended schedule ordered canceled and proceeding discontinued.

¹ This report also embraces Nos. 140, Intercoastal Rates of States Steamship Company and Pacific-Atlantic Steamship Company; 141, Intercoastal Rates of Shepard Steamship Company; 144, Intercoastal Rates of Argonaut Steamship Line, Inc.; 146, Rates of Panama Pacific and Grace Lines on Iron and Steel Articles; 148, Intercoastal Rates of Pacific Coast Direct Line, Inc. et al.; and 151, Eastbound Intercoastal Rates on Oranges, Lemons and Grapefruit over Luckenbach Steamship Company, Inc.

Proposed reductions in eastbound intercoastal rates of Luckenbach Steamship Company, Inc. on oranges, lemons and grapefruit, in car-loads, found not justified. Suspended schedule ordered canceled and proceeding discontinued.

Edward B. Long, Jr. and F. W. S. Locke for Nelson Steamship Company.

L. D. Stapleton, Jr. and James A. Farrell, Jr. for Argonaut Steamship Line, Inc.

E. Farwell and A. J. Mouris for Weyerhaeuser Steamship Company and Pacific Coast Direct Line, Inc.

W. W. Nottingham and R. A. Nicol for States Steamship Company and Pacific-Atlantic Steamship Co.

Harold S. Deming and Otis N. Shepard for Shepard Steamship Company.

G. E. Talmadge, Jr. for American Line Steamship Corporation.

J. W. Chapman for Panama Mail Steamship Company.

Frank Lyon and W. S. McPherson for American-Hawaiian Steamship Company and Williams Steamship Corporation.

R. T. Mount and H. W. Warley for Calmar Steamship Corporation.

Elisha Hanson for Swayne & Hoyt, Ltd. (Gulf Pacific Line) and Gulf Pacific Mail Line, Ltd.

Frank Lyon and O. P. Caldwell for Luckenbach Steamship Company.

W. P. Rudrow for Sudden and Christenson (Arrow Line); C. S. Belsterling and T. F. Lynch for Isthmian Steamship Company; Raymond F. Burley for McCormick Steamship Company; and R. A. Lauckhardt for Dollar Steamship Lines, Inc., Ltd.

H. E. Manghum for Sacramento Chamber of Commerce; Mason Manghum for Richmond Chamber of Commerce; Charles R. Seal for Baltimore Association of Commerce; H. J. Wagner for Norfolk Port Traffic Commission; and A. C. Welsh for Brooklyn Chamber of Commerce.

C. M. Smith for Chain Store Traffic League; George O. Griffith for Sterling Products Company Inc. and National Industrial Traffic League; W. F. Price for J. B. Williams Company; T. A. Bosley for Virginia-Carolina Chemical Corporation; R. F. Schaeffer for Columbia Peanut Company; H. D. Musick for Blue Ridge Glass Corporation and Franklin Glass Corporation; Daniel W. Longo for Reynolds Metals Company, Inc.; Frank Rich for J. C. Penney Company, Inc.; George T. Jenkisson for Hercules Powder Company, Inc.; K. L. R. Baird for The New Jersey Zinc Company; Henry M. Brooks for The Pacific Coast Company; A. D. Whittemore for American Cyanamid Company; D. M. Johnson for Edenton Peanut Company; J. C. Albert for West Virginia Pulp and Paper Company; J. R. Eldridge

for Virginia Smelting Company; *A. J. Whitman* for American Agricultural Chemical Company and Bowker Chemical Company; *W. A. Smith* for Vick Chemical Company; and *Alex Zeeve* for himself.

REPORT OF THE DEPARTMENT :

BY THE SECRETARY OF COMMERCE :

Respondents are common carriers by water engaged in intercoastal transportation between Atlantic and Pacific coast points. Pacific Coast Direct Line, Inc. only operates westbound, and Weyerhaeuser Steamship Company only operates eastbound.

All carriers engaged in the transportation of general cargo in this trade were members of the United States Intercoastal Conference, a voluntary association of carriers organized for the purpose of attaining stability in rates, at the time the conference disbanded on July 31, 1934, except States Steamship Company, a new line in this trade; Shepard Steamship Company; and Calmar Steamship Corporation, not here involved. So-called conference tariffs were published and filed by Agent R. C. Thackara. His tariffs SB-I No. 4, naming westbound class and commodity rates and SB-I No. 5, naming eastbound class and commodity rates, are at present in effect.

Nos. 139, 144, and 148.

These three cases are identical in many material respects and for convenience will be considered together. The record in Docket No. 126, a general investigation of intercoastal transportation heard but not yet decided, is stipulated into the record in each case.

By schedules filed by it to become effective August 1, 1934, Nelson Steamship Company proposed reductions in all its rates, except on iron and steel articles and eastbound lumber. Substantially similar reductions are proposed in the rates of Argonaut Steamship Line, Inc., by schedules filed on its behalf by Agent T. J. Burton to become effective August 31, 1934; in the rates of Pacific Coast Direct Line, Inc. by schedule filed by it to become effective September 9, 1934; and in the rates of Weyerhaeuser Steamship Company by schedules filed on its behalf by Agent L. C. Howard to become effective September 9, 1934. Hereinafter these four respondents will be referred to as Nelson, Argonaut, Pacific Coast Direct, and Weyerhaeuser, respectively. The operation of these schedules was suspended in each instance for a period of four months from the proposed effective date thereof.

Water transportation between Atlantic and Pacific Coast points is characterized by carrier competition increasing in bitterness and

intensity. The conference, intended as a stabilizer of rates, was never able to enroll or keep within its fold all the carriers operating in this trade and otherwise it did not have a happy existence. It was organized on August 5, 1920, and functioned until June, 1922. This period was followed by a severe rate war lasting until the conference was again organized on August 1, 1923. From that date it continued, as stated by a witness, "in a somewhat hit-and-miss fashion" until July 31, 1927. Reorganized on August 1, 1927, it fell apart on February 13, 1931, when a "pretty savage" rate war ensued during which each line made its own "quotations." Organized once more it functioned for only seven months, or from March 1 to September 30, 1932. A new agreement became effective on October 1, 1932, and in modified form the conference continued from time to time until last disbanded on July 31, 1934.

During the period from August 5, 1920, to June 1922, all members of the conference charged uniform rates in both directions regardless of any carrier disability which might have existed. During the next period of the conference, or from August 1, 1923, to July 31, 1927, uniform rates were charged on eastbound traffic. On westbound traffic, excepting iron and steel articles, when the rate was 55 cents per 100 pounds or more, carriers operating vessels not more frequently than once every fourteen days, designated class "B" lines, were permitted to charge 5 percent, maximum 7.5 cents per 100 pounds, less than the other members of the conference, designated class "A" lines. The agreement governing the conference as reorganized on August 1, 1927, provided uniformity in the westbound and eastbound rates except on certain westbound commodities as to which the "A" lines charged 5 cents per 100 pounds more than the "B" lines. The agreement leading to the reorganization of March 1, 1932, provided:

FIFTH: (a) All lines agree to abide by tariffs eastbound and westbound to be immediately published and made effective March 1, 1932, in which tariff carload rates shall be fixed at "B" line contract rates in effect February 1, 1931, or tariff rates where no contract rates existed.

* * * * *

SEVENTH: Lines sailing not more frequently than every fourteen days with advertised transit time of twenty-one days from north of Hatteras and twenty days from Hampton Roads shall be considered as "B" lines and shall quote "B" line rates.

* * * * *

EIGHTH: Lines sailing not more frequently than an average of 22 day intervals, with the same transit restrictions as provided in Paragraph Seventh, shall be considered as "C" lines and shall be permitted to quote:

5 percent under "B" lines up to and including items rated at 40 cents, exception iron and steel. 7½ percent under "B" lines on items over 40 cents with a limit of 15 cents per 100 lbs., excepting iron and steel; * * *

NINTH: Lines not falling within the description stated in either Paragraph Seventh or Paragraph Eighth shall be considered as "A" lines and on items stated in amended handicap list of which copy is appended hereto and made a part hereof, said lines shall quote rates 50 cents per ton higher than the rates quoted by the "B" lines under Paragraph Seventh hereof, on such items; Quaker Line to quote same rates as "A" lines from Delaware River ports.

The last of the agreements governing the conference which, as stated, came to an end on July 31, 1934, provided:

7. There shall be two classes of lines westbound, viz: "A" and "B." Lines sailing not more frequently than an average of ten days with advertised transit time of twenty-one days from last loading port north of Hatteras (twenty days from Hampton Roads) shall be "B" lines and shall quote "B" line rates westbound. All other lines shall quote "A" rates westbound. * * *

There shall be but one class of lines eastbound, and all lines eastbound shall quote parity of rates on all commodities including lumber and lumber products.

8. *Westbound*, the "A" lines shall charge two and one-half cents ($2\frac{1}{2}\phi$) per 100 pounds on both carload and less carload lots over the rates charged by the "B" lines on those items covered by Handicap List which list is included in United States Intercoastal Conference Westbound Tariff No. 1 duly filed with the United States Shipping Board June 1, 1933. Said list may be amended from time to time by unanimous vote.

Neither Nelson, Argonaut nor Pacific Coast Direct owns any vessels. Those operated or available for operation by Nelson or Argonaut are chartered from affiliated companies. Nelson has 14 and Argonaut has 8 such vessels. Weyerhaeuser owns 4 vessels, which it operates eastbound. These are the vessels which Pacific Coast Direct operates in the opposite direction. Respondents were "B" line members of the conference at the time it disbanded on July 31, 1934. Weyerhaeuser and Pacific Coast Direct were treated as one member. Although with 14 vessels Nelson could have maintained sailings from the Atlantic coast of one every week and thus qualified as an "A" line, it chose to operate only 4 vessels at a frequency of about 30 days. This resulted in a great financial benefit to it under a revenue pool provided by the conference agreement.

Since the organization of the conference on August 5, 1920, carriers members thereof have named uniform rates on eastbound traffic. On such traffic Calmar Steamship Corporation, hereinafter referred to as Calmar, maintains rates substantially similar to those at present in effect via the lines of former members of the conference, except for a port equalization rule resulting in lower rates on certain traffic. The rates of Shepard Steamship Company, hereinafter referred to as Shepard, are generally lower by 3 percent. The suspended schedules involve reductions of 3 percent in the eastbound rates on all commodities excepting lumber, not including piling, posts, and spars, but in view of the fact that the rate controversies

between carriers in this trade have been principally, if not entirely, on westbound traffic, it is not necessary to discuss the eastbound situation, except to say that because of a port-equalization rule contained in the eastbound suspended schedules, the proposed eastbound rates would be lower than those maintained by Shepard to the extent such rule would operate.

When differences existed in the westbound conference rates they were predicated on frequency of sailings and time in transit. During the last period of the conference such differences existed only on certain heavy-loading, low-grade commodities included in the so-called handicap list. Such differences still exist. This list is said to represent approximately 15 percent of the tariff items. On such commodities the former "A" lines charged and still charge 2.5 cents per 100 pounds on carload and less-than-carload lots more than the "B" lines.

The level of the westbound rates of Calmar is somewhat lower than that of the former "B" members of the conference. Some of its rates are known as contract rates, or rates as to which there exists a contract with the shipper. However an understanding had been reached under which Calmar would increase its noncontract rates to the level of the "B" rates and the conference members, if they so desired, could reduce their rates to meet the Calmar contract rates. This understanding was being carried out at the time the conference disbanded.

Generally Shepard maintains and has maintained the lowest westbound rates in this trade. It was the only class "C" line when the conference was reorganized on March 1, 1932. The following is taken from the testimony of a member of the committee appointed to reorganize the conference at that time.

We reserved our discussion with the Shepard Line to the last. I think we had composed all our internal differences, and had a conference agreement and wanted to get a 100 percent conference, and I was appointed chairman of that committee, and we had several discussions with Mr. Shepard and his associates. I mention that because it will give you the origin of this "C" line classification.

The committee associated with me were absolutely opposed to any further negotiation with Mr. Shepard, when he asked for a discount under the "B" rates, but I felt it was better to have Mr. Shepard tied into the conference on a fixed differential than to have him name his own differential, the lesser of two evils. He might have taken a 30 or 35 percent discount, and if we could get him in on a 5 or 10 percent discount at that time, it was considered expedient. Mr. Shepard really dictated his own classification and his own terms. It was either that or he would go out on his own.

That became the yardstick for the "C" classification. * * * It was all a matter of business trading. I do not say that any of us had any more virtue than the other. It is not as though we had a regular, logical basis for classifying these lines.

The conference as reorganized at that time only lasted seven months. Its collapse was precipitated by the fact that on March 23, 1932, or only three weeks after its organization, led by Nelson practically all the "B" lines reduced their sailings and thus qualified as "C" lines under the terms of the agreement.

The agreement governing the conference as reorganized on October 1, 1932, in essence provided for a pool to consist of 3 percent of the ocean "freights" eastbound and westbound of the carriers, with some exceptions, which as a matter of convenience and in preference to a general increase in the freight rates, was collected as a surcharge over the freight rates prevailing from time to time. Effective March 21, 1934, the members of the conference increased the freight rates by 3 percent and eliminated the surcharge rule.

It has been the practice of Shepard to name rates 5 percent, when the rate was 40 cents per 100 pounds or less, and 7.5 percent when the rate was more, lower than the lowest rate at the time in existence on westbound traffic regardless of whether such rate was a conference rate or not. Prior to the Intercoastal Shipping Act, 1933, carriers filed only their maximum rates, which were decidedly higher than those charged the shippers. Although the record does not disclose the specific basis adopted by the members of the conference or Shepard for the westbound rates filed by them under that act, an analysis of such tariffs, filed to become effective on June 1, 1933, shows some of the rates of Shepard to be the same or higher than those filed by the members of the conference and that when the difference in the rates existed in favor of Shepard it generally was greater than the percentages indicated. This difference was further widened by the fact that Shepard made no general increases in its rates at the time to correspond with those effective on March 21, 1934, in the conference rates.

Five "A" and nine "B" lines, including Weyerhaeuser, composed the conference at the time it ceased to exist on July 31, 1934. At present they generally maintain the rates and rate relationship then in effect. The table below contrasts the proposed westbound rates on selected commodities with the rates now in effect over the "A" and "B" lines, Calmar and Shepard. Rates are stated in cents per 100 pounds.

Commodity	Minimum weight	"A" Lines	"B" Lines	Calmar	Shepard	Proposed	Percentage proposed rates lower than Shepard
Pork and beans, soups, spaghetti, or tomato juice.....	Pounds 36,000	40	40	40	38	33	13.15
Woolens n. o. s. in the original piece in cases.....	12,000	180.5	180.5	180.5	162	139	14.19
Linen, silk, or rayon thread.....	24,000	134	134	134	120	111	7.60
Alum, potash, or ammonia.....	24,000	67	67	67	60	31	48.33
Dry goods, viz, toweling, cotton, or rayon.....	10,000	77.5	77.5	75	69.5	65	6.47
Aluminum blooms, billets, ingots, pigs, or slabs.....	30,000	62	62	62	55.5	41.5	25.22
Portland cement.....	50,000	38.5	36	36	33.5	31	7.46
Aluminum chutes, tubing, or pipe fittings.....	24,000	103	103	103	92.5	65	29.72
Cement, viz, binder or floor.....	24,000	77.5	77.5	77.5	69.5	55.5	20.14
Fire brick, boxed or crated.....	40,000	43.5	41	41	38	33.5	11.84
Baking powder.....	24,000	56.5	56.5	56.5	51	46.5	8.82
Butchers' benches.....	24,000	82.5	82.5	82.5	74	65	12.16
Barium.....	24,000	77.5	77.5	77.5	69.5	55.5	20.14
Hose or belting.....	24,000	92.5	92.5	92.5	83.5	74	11.37
Barytes, in bulk.....	2,000,000	26	26	26	24	22	8.33
Zinc dust.....	36,000	43.5	41	41	38	33.5	11.84
Wooden toothpicks.....	15,000	103	103	103	92.5	78.5	15.13
Copper cable.....	24,000	41	41	41	46.5	38	18.27
Twine, binder.....	24,000	41	41	41	38	28.5	25.00
Cigarettes.....	24,000	87.5	87.5	87.5	79	74	6.32
Pneumatic rubber tires.....	20,000	67	67	65	60	46.5	22.50
Solid rubber tires.....	20,000	67	67	67	46.5	46.5	-----
Tapioca.....	40,000	87.5	87.5	65	78.5	60	23.56
Maple sugar.....	24,000	56.5	56.5	56.5	51	46.5	8.82
Rubber goods, viz, rubber gloves.....	20,000	154.5	154.5	154.5	139	115.5	16.90
Index cards or guides.....	24,000	67	67	67	61	55.5	9.01
Lithopone.....	24,000	36	36	36	33.5	33.5	-----
Motorcycles.....	12,000	180.5	180.5	180.5	162	139	14.19
Coin-operating machines.....	30,000	190.5	190.5	190.5	171	162	5.28
Ground peanut shells.....	24,000	59	56.5	56.5	51	38	25.49
Insecticides or fungicides.....	10,000	82.5	82.5	82.5	69.5	69.5	-----
Green salted hides.....	24,000	92.5	92.5	92.5	83.5	55.5	33.53
Anchors, iron, weight not exceeding 700 pounds.....	24,000	67	67	67	60	51	15.00
Chlorine or carbonic acid gas.....	24,000	82.5	82.5	82.5	74	65	12.16
Foundry facings, dry.....	24,000	56.5	56.5	45	41.5	38	8.43
Flax, hemp, jute, or vegetable fiber.....	24,000	103	103	103	92.5	65	29.72

An exhibit introduced on behalf of Nelson contrasts the tonnage and number of sailings of various lines in the trade, not including Calmar, during the period from March 1 to September 30, 1932. It was stated that its westbound tariffs under suspension were constructed "on the same structure that the Shepard Line had built their tariff on, when they decided not to go along with the conference on June 1, 1933, and is to all intents and purposes, theoretically, anyhow, on the same basis as the tariff which we enjoyed when we were in the conference in the period March 1 to September 30, when we had a differential freight rate." This is also true of the westbound suspended schedules of Argonaut and Pacific Coast Direct. The exhibit shows that the average loading of Argonaut was 4,231 tons and of Nelson 4,022 tons, by far the highest for the 13 lines there indicated. This showing corroborates the statement of the then class "A" lines that the lower competitive rates of the "C" lines attracted too much traffic to such lines. This contributed to the

collapse of the conference, which had been reorganized but seven months before. It is clear that any showing made under such circumstances and for such short period is not persuasive of the lawfulness of the proposed tariffs. In passing it should be stated that from time to time since June 1, 1933, Shepard has filed rates with a view to maintaining a spread approximating 5 percent when the rate is 40 cents per 100 pounds or less, and 7.5 percent when the rate is more, under the lowest competitive rate. Should the proposed westbound rates become effective in many instances they would be lower than those at present in effect via Shepard.

Shippers of commodities requiring expedited service have preferred the "A" lines. Such commodities generally are high grade and are not included in the handicap list. It is said by respondents that the proposed reductions are intended to increase the volume of their business and the quality thereof. It is clear they will not create new tonnage but are merely calculated to divert to these carriers the tonnage available for transportation by all lines, and whether or not they will attract business to respondents depends, among other things, upon the competitive action by other carriers. Other carriers expressed the opinion that the suspended schedules are the commencement of drastic competitive reductions in the rates which will be followed by others, sooner or later extending the "vicious circle" throughout the trade. These carriers feel their present rates cannot stand such drastic reductions. However, they state similar steps will have to be taken by them if the suspended schedules are allowed to become effective. This will not be unlike competitive action taken by them in the past. It is due to such measures that this trade has never been on a solid foundation.

The contention was also advanced on behalf of Nelson that the suspended schedules fairly reflect the level of rates at which a carrier operating at a frequency of 30 days could successfully attract traffic. However the conference rates seem to have been made without any consideration of cost of service or any transportation or traffic condition or any particular system of rate making other than carrier competition. Frequency of sailings, like time in transit, pooling of revenues, port allocation and port equalization were mere features of a compromise adopted in an attempt to solve an acute competitive situation, without controlling force after the conference disbanded. For instance during the last period of the conference Nelson preferred to operate only 4 of the 14 vessels it had available for operation. By doing so it retained its status as a "B" line and participated to a greater extent in the distribution of revenues from the pool, which had been set up as an aid to the "B" lines. There

is nothing in the law or elsewhere that would prevent it at present from operating these 14 vessels and thereby maintain more frequent sailings. With this number of vessels it could immediately increase sailings to one every week. It admits that if it "went on to a weekly basis that we would not be playing the game if we quoted a differential rate." During the last period of the conference Argonaut maintained a frequency approximating one sailing every 28 or 30 days. With 8 vessels which it now has available for operation this frequency could be increased. Its witness admitted its suspended rates should be higher if its frequency of sailings is increased.

The principal witness for Nelson thinks the proposed rates are compensatory, but such opinion testimony without any supporting data is of little value.

The position, contentions, present and proposed rates, and objective of the proposed rates of Argonaut, Weyerhaeuser, and Pacific Coast Direct are practically identical with those of Nelson. These respondents introduced no substantial evidence in support of their suspended schedules, and what has been said as to the rates proposed by Nelson applies with equal force to the rates proposed by these other respondents. It was stated on behalf of Argonaut that the rates proposed by it would be compensatory if they attract the volume of business they are calculated to attract. But, as has been stated hereinbefore, the amount of business to be attracted by the proposed rates depends, among other things, upon the competitive action by other carriers. Argonaut has 8 vessels available for operation, and on its behalf it was further stated that if Nelson were to operate its fleet of 14 vessels, the rates proposed by Nelson would result in an unfair situation, for the frequency of their services would not be comparable. At present Shepard and Pacific Coast Direct each has four vessels available for operation. Other carriers in this trade have more vessels at their disposal. These cases indirectly present the question of rate differences, if any, to be observed by the various lines in this trade, taking into consideration frequency of sailings and other factors, a question directly involved in No. 126.

Some shippers appeared in support of the suspended schedules. They stated the present rates on their commodities are high and stressed the need for lower rates to meet competition. Such testimony refers to specific commodities. While adjustments in present rates might in some instances be merited, we are here concerned with a larger problem. The lawfulness of individual rates should be the subject of complaints under the Shipping Act, 1916.

Respondents are agreeable to increasing their proposed rates to the level of the rates of Shepard. These cases are another chapter in the prolonged rate struggle between intercoastal carriers.

Section 1 of the Merchant Marine Act, 1920 states—

That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, insofar as may not be inconsistent with the express provisions of this Act, the United States Shipping Board shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be obtained.

This policy is confirmed and reaffirmed by the Merchant Marine Act, 1928. Shippers need rate stability in order to conduct their business on sound principles. Destructive competition between carriers may afford a temporary benefit to some of the shippers particularly interested, but this does not compensate for its far-reaching and serious adverse effect upon the maintenance of an efficient merchant marine with which this Department is charged by law. The acts which this Department administers frown upon destructive carrier competition, and the greater the danger in this respect the greater is the need for unswerving fidelity to the policy and primary purpose declared by law.

The interest of the public demands that these carriers shall receive revenues which will enable them to keep their fleets in good repair and maintain efficient service. Much of the equipment used in this trade, including that used by respondents, was constructed many years ago and is now nearly obsolete. Financial showings of these respondents and other carriers in the trade are not what they should be. It appears from data submitted by these respondents that for the calendar year 1933 Nelson showed an operating profit of \$262,864.55, but of this amount \$233,575.65 was obtained from the conference pool. For the same period Argonaut showed an operating loss of \$272,111.33, and Pacific Coast Direct Line of \$2,082.13. Weyerhaeuser showed a profit of \$17,655.08 before taxes or setting aside any amount for depreciation.

Section 18 of the Shipping Act imposes upon respondents the obligation of establishing and observing just and reasonable rates and tariffs. Although the acts which this department administers do not define just and reasonable rates and tariffs, it is well established that a rate may be so low as to be unreasonable and thus unlawful. It is clear that the tariffs under suspension propose a rate level that would defeat the intent of Congress to maintain a suitable merchant marine and provide for the proper growth of our domestic com-

merce in this trade. This department should exercise all the powers at its command to prevent rate wars of the character here evidenced, and the bad effects upon our commerce, and upon carriers and shippers alike, that inhere in such wars. Upon the record the department finds that the proposed tariffs do not meet the requirements imposed by the statutes and are unlawful.

The Intercoastal Shipping Act, 1933, requires that schedules shall show all the rates and charges for or in connection with transportation and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates or charges or the value of the service rendered to the consignor or consignee. The purpose of the law is the publication of rates, charges, rules, and regulations in such manner as to enable the consignor or consignee to see for himself the exact price of transportation. No changes therein may be made except by the publication, filing and posting of new schedules plainly showing the changes proposed to be made. The law directs the department by regulations to prescribe the form and manner in which schedules shall be published, filed, and posted and to reject any schedule filed with it which is not in consonance with law and such regulations. Regulations have been issued pursuant to this mandate.

The suspended tariffs fail to meet the requirements of law and such regulations in material respects. For instance they do not specify the schedule or schedules now in effect which they cancel or the changes therein which in essence they effect as required by law and the regulations. The schedule of Argonaut naming westbound rates on its title page shows it to be filed by "T. J. Burton, Traffic Manager." Each other page of the schedule shows it to be filed by "T. J. Burton, Agent." The regulations provide for filing of schedules by the carrier itself or by a duly authorized agent and specifically prescribe the manner in which this should be done. This schedule fails to meet such requirements. The schedule of Weyerhaeuser was filed by L. C. Howard, Agent. In such instances the regulations require the filing of the original power of attorney with the department. Similar powers had been given by this respondent to Agent R. C. Thackara. In view of the explanation that the powers given Agent Howard were not intended to conflict with those given Agent Thackara, the power of attorney given Agent Howard was accepted for filing with the understanding it would be used only in the publication of rates between points not included in the power of attorney given Agent Thackara. The suspended schedule contains rates between points named in the schedule filed by Agent Thackara on behalf of this respondent. The rates filed by Agent Thackara are now in effect. The regulations further require that

where a schedule applies from a point or points on the route of one carrier to a point or points on the route of another carrier, each carrier participating in the through transportation, other than the carrier by which the schedule is filed, shall file a concurrence with the department and that such concurrence shall by number be shown immediately following the name of each such carrier in the body of the schedule. The schedules filed by Argonaut, Weyerhaeuser, and Pacific Coast Direct name joint through rates with carriers shown therein, but they do not show the concurrence or the concurrence number of any other such carriers. Such other carriers have not filed the required concurrences with this department.

Rule 3 (f) of Nelson's westbound schedule provides:

The term "port equalization" as used in this tariff means the difference between the cost of transportation from the point of origin of the cargo to the port at which it is loaded into Nelson Steamship Company's vessel and the cost of transportation on the same cargo from the same point of origin to the port taking the lowest rail rate at which such cargo could be loaded for Intercoastal shipment into an Intercoastal vessel.

Except as otherwise provided for in this tariff, port equalization will be allowed as follows:

1. On all shipments on which the rail rate from point of origin to port at which shipment is loaded into Nelson Steamship Company's vessels equals or exceeds Nine Cents (9¢) per 100 pounds, but such equalization shall not exceed the actual difference between the rail rate from point of origin to port at which shipment is loaded into the vessel and the rail rate from point of origin to the port taking the lowest rail rate at which such cargo could be loaded for Intercoastal shipment into an Intercoastal vessel, subject to equalization as hereinafter provided in this rule.

2. On all shipments that move by private, public or Government-owned dray, truck, lighter or barge to the port at which same is loaded into Nelson Steamship Company's vessel, the port equalization allowed will be based on the actual difference in the rail rate from point of origin to the port at which shipment is loaded into Nelson Steamship Company's vessel and the rail rate from point of origin to the port taking the lowest rail rate at which such cargo could be loaded for Intercoastal shipment into an Intercoastal vessel, subject to equalization as hereinafter provided in this rule.

3. When shipment moves under its own power to the port at which same is loaded into Nelson Steamship Company's vessel, port equalization will be allowed on the same basis as provided for in Section No. 2 of this rule.

4. Except where otherwise provided in this tariff, port equalization shall be allowed as follows:

When rate as provided for in this tariff is not in excess of Fifty (50¢) Cents per 100 pounds, the maximum allowance shall be Three (3¢) Cents per 100 pounds.

When rate as provided for in this tariff is in excess of Fifty (50¢) Cents per 100 pounds, but is not in excess of One Dollar (\$1.00) per 100 pounds, the maximum allowance shall be Five (5¢) Cents per 100 pounds, but in no case shall the net rate to Nelson Steamship Company's vessel be less than Forty-Seven (47¢) Cents per 100 pounds, exclusive of all other allowances or absorptions provided for in this tariff.

When rate as provided for in this tariff is in excess of One Dollar (\$1.00) per 100 pounds, the maximum allowance shall be Ten (10¢) Cents per 100 pounds, but in no case shall the net rate to Nelson Steamship Company's vessel be less than Ninety-Five (95¢) Cents per 100 pounds, exclusive of all other allowances or absorptions provided for in this tariff.

A substantially similar rule is contained in the westbound schedules of Argonaut and Pacific Coast Direct. It will be noted that in order to determine the applicable rate under this rule it is necessary to determine the port taking the lowest rail rate from the inland point of origin of the shipment, which may be one served by one of these respondents or not, and the amount of such rail rate. The rail tariffs are not filed with this department. To hold that a shipper must look beyond the tariffs of the carrier offering him a service to ascertain the rate would be to put the shipper under an onerous obligation not imposed upon him by law. The inclusion of any provision in a tariff which makes the amount of the charge dependent upon the measure of a rate published in tariffs of some other carrier, and more so when such tariffs are not filed with this department, cannot too strongly be condemned. At present Nelson, Argonaut, and Weyerhaeuser have no port equalization rule on eastbound traffic. What has been said of their westbound rule applies with equal force to the port equalization rule contained in their eastbound suspended schedules. The westbound tariffs of respondents at present in effect contain port equalization provisions in essence similar to those in the proposed schedules, but this fact affords no justification, particularly when the lawfulness of such provisions is now pending determination in another proceeding.

The suspended schedules contain other rules which seem to have been taken from tariffs now in effect but which nevertheless are so defective as to be contrary to law. A few illustrations should suffice. The following rule is contained in the terminal section of the eastbound schedule of Weyerhaeuser:

Where goods, shipped from any of the ports named on page No. 4 of this tariff at which vessels of Weyerhaeuser Steamship Company do not call to load cargo, are transported by water from such port to the nearest port at which Weyerhaeuser Steamship Company vessels load and are there loaded on a Weyerhaeuser Steamship Company vessel, Weyerhaeuser Steamship Company will absorb the actual cost for such water transportation and any extra cost of clerking, handling and service charges, and any extra wharfage and municipal and state tolls.

The following rule is taken from the terminal section of the westbound schedule of Pacific Coast Direct:

Cargo carried on Pacific Coast Direct Line, Inc. vessel for discharge at * * * may be transshipped by Pacific Coast Direct Line, Inc. at any of the transfer points stated below for such ports, and Pacific Coast Direct

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Line, Inc. will absorb the extra cost brought about by the transshipment over the cost of the cargo if direct discharge had been made.

Page 98 of the Westbound schedule of Argonaut contains the following provision:

Where goods, shipped from any of the ports named on page No. 3 of this tariff at which vessels of Argonaut Steamship Line, Inc. do not call to load cargo, are transported by water from such port to the nearest port at which Argonaut Steamship Line, Inc. vessels load and are there loaded on an Argonaut Steamship Line, Inc. vessel, Argonaut Steamship Line, Inc. will absorb the actual cost of such water transportation and any extra cost of clerking, handling and service charges, and any extra wharfrage and municipal and state tolls.

The westbound schedule of Nelson provides that at Baltimore, Md., and Philadelphia, Pa.—

When railroads do not unload or absorb cost of unloading shipments, from railroad equipment, or pay the cost of unloading, Nelson Steamship Company will absorb the cost of such car unloading, when the cargo is loaded into Nelson Steamship Company's vessel.

Such rules and others contained in the suspended schedules, not necessary to detail, which do not disclose the cost of the service or the specific amount to be absorbed, clearly open the gate to rebates, undue preferences and prejudices prohibited by law.

A motion was made on behalf of Nelson that the suspension order be vacated on the ground that it deprives shippers of rates and services which are not in violation of any provision of law which the department is empowered to correct. A motion to vacate the suspension order was also made on behalf of Argonaut based on the ground that "the rates and rules contained in the suspended tariff are lawful in that the same have been permitted to the competitors of this respondent, that the denial of the right of respondent to quote such rates and rules is unduly discriminatory and is beyond the powers of the Bureau and in violation of the Shipping Act of 1916 and acts amendatory thereto." The powers of this department to suspend the operation of any schedule filed with it stating a new individual or joint rate, charge, classification, regulation, or practice affecting any rate or charge, and to enter, either upon complaint or upon its own initiative without complaint, upon a hearing concerning the lawfulness of such rate, charge, classification, regulation, or practice is made clear by section 3 of the Intercoastal Shipping Act, 1933, and the motions are hereby denied. The rates and rules referred to in the motion made on behalf of Argonaut as having "been permitted to the competitors of this respondent" apparently are those in effect via Shepard. Complaints attacking the lawfulness of such rates and rules have been heard recently and the matter is now pending determination.

The department finds that the proposed schedules have not been justified. An order will be entered requiring their cancellation in each case and discontinuing each proceeding.

No. 140

Pacific-Atlantic Steamship Co., like respondents in the preceding cases, was a class "B" member of the United States Intercoastal Conference at the time the conference ceased to exist. It is a party to Agent R. C. Thackara's tariffs SB-I Nos. 4 and 5. States Steamship Company is a common carrier by water engaged in the trans-pacific trade.

By schedules filed by Agent J. F. Schumacher to become effective June 23, 1934, States Steamship Company proposed to establish for the first time rates for intercoastal transportation between Atlantic and Pacific coast points. Such proposed schedules were patterned after the rates of Calmar now in effect which, as hereinbefore shown, are substantially on a parity with the conference "B" rates, excepting approximately 50 items as to which there exists a contract between Calmar and the shipper, and on which Calmar's rates are lower. Respondent voluntarily postponed the effective date of its schedules until August 1, 1934. By supplements effective on that date, Pacific-Atlantic Steamship Co. was added as a party to such tariffs. The operation of the schedules and supplements was suspended until December 1, 1934.

A hearing was had commencing August 8, 1934. By petition dated August 22, 1934, as amended, respondents requested special permission to cancel and withdraw the suspended tariffs and supplements and to concur in, and otherwise adopt, as "B" lines, the rates, rules and regulations published by Agent Thackara pending disposition of No. 126. Special permission was granted as requested. The suspended schedules and supplements were canceled, and an order was entered September 15, 1934 vacating the suspension order and discontinuing the proceeding. Each respondent is now shown as party to Agent Thackara's tariffs. In view of the foregoing no further action is necessary.

No. 141

By schedules filed to become effective August 2, 1934, Shepard proposed increases and reductions in its westbound intercoastal rates on numerous commodities. The operation of the schedules was suspended until December 2, 1934. Rates will be stated in cents per 100 pounds.

Reference has been made in this report to the level of the rates at present maintained by this respondent, the history thereof and its policy of filing rates from time to time with a view of maintaining a spread approximating 5 percent when the rate is 40 cents per 100 pounds or less, and 7.5 percent when the rate is more, under the lowest competitive rate. It should be remembered an analysis of the tariffs filed by respondent on June 1, 1933, shows some of its rates to be the same or higher than those contemporaneously filed by then members of the conference and that when the difference in the rates existed in favor of respondent it generally was greater than as indicated. It should also be remembered that for purposes of the revenue pool, beginning October 1, 1932, the conference carriers imposed a surcharge of 3 percent over their rates, which on March 21, 1934, became a part of the rate itself. As in the opinion of respondent the surcharge should not be considered part of the rate, the rates filed by it from time to time since June 1, 1933, have disregarded 3 percent of the conference rate, with the result that when the lowest competitive rate is that of a former "B" line member of the conference the difference in the rate is accordingly greater than the percentages hereinbefore referred to.

The suspended schedules were filed in furtherance of Shepard's policy. However this is not without exception. At present on milk of magnesia respondent maintains rates of 51 cents, minimum weight 10,000 pounds, and 46.5 cents, minimum 24,000 pounds. The lowest competitive rates are 65 cents, minimum 10,000 pounds, and 55 cents, minimum 30,000 pounds, maintained by Calmar. The suspended schedules proposed rates of 60 cents, minimum 10,000 pounds, an increase of 9 cents in the rate; and 51 cents, minimum 30,000 pounds, an increase of 4.5 cents in the rate and of 6,000 pounds in the minimum weight. It will be noted such increases adjust to the spread respondent claims should exist between its own and the lowest competitive rate. But the proposed schedules do not stop there. In addition in item 1068 they name a rate on this commodity of 43 cents, minimum 60,000 pounds, and in item 1069A a rate of 40 cents, minimum 100,000 pounds, straight or mixed with face cream or other commodities there specified. No competitor of respondent has straight or mixed carload rates on milk of magnesia based on such weight minima. The lower rates at the higher weight minima are intended to accommodate a particular shipper of that commodity. Rule 14 in respondent's tariff SB-I No. 1 now in effect reads as follows:

(a) Where reference to this Rule is made in individual rate items of this Rate List, the C. L. minimum weight shall be that which is named in said Rate Items.

(b) The C. L. minimum weight on commodities not subject to Rule 14(a) hereof, shall be as shown in the individual rate items of this Rate List unless there is a lower C. L. minimum weight provided for the commodity or commodities in Western classification SB-I No. 1, supplements thereto or reissues thereof, which C. L. minimum weight will then govern.

Western Classification names a carload minimum weight of 30,000 pounds on "Drugs or Medicines, N. O. I. B. N." Milk of magnesia is covered thereby and as neither the item naming the proposed 43-cent rate nor the item naming the proposed 40-cent rate refers to this rule, the minimum weight contained in Western Classification would govern. Thus the suspended schedules would have the effect of naming three conflicting rates, 51, 43, and 40 cents, on a minimum weight of 30,000 pounds. Under a familiar rule of construction the lowest of such rates would be legally applicable. Such legally applicable rate would be in excess of 27 percent under the lowest competitive rate. Tariff conflicts of the character here described should be avoided.

A shipper of face cream testified he does not ship any of the other commodities mentioned in the rate items under discussion. As face cream moves in small quantities he urged items 1068 and 1069A would give an undue advantage to the few shippers who could avail themselves of the mixed-carload provision. But the interpretation placed on these items would make the minimum weights of 60,000 pounds and 100,000 pounds purely ornamental.

The department finds that the proposed schedules, except only items 1068 and 1069A, have been justified. An order in conformity with these conclusions will be entered.

As has been stated, the question of rate differences, if any, to be observed by the various carriers engaged in intercoastal transportation between the Atlantic and Pacific coast points is now pending in No. 126, and in disposing of the cases embraced by this report the department does not decide any question pending in that proceeding.

No. 146

Respondents were class "A" members of the United States Intercoastal Conference at the time of its dissolution on July 31, 1934. Rule 9 of Agent Thackara's tariff SB-I No. 4, filed on behalf of all members of the conference, was adopted to reflect in part the compromise agreement leading to the reorganization of the conference on October 1, 1932. It reads:

Port equalization will be permitted on carloads only by all lines on west-bound tariff items bearing the designation "P. E." in connection with the number thereof. No Port Equalization will be permitted on L. C. L. shipments.

Port Equalization is not to be applied however, unless the rate from point
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of origin into the port of exit equals or exceeds nine cents (9¢) per 100 pounds and is not to exceed the actual difference in like kinds of transportation from the point of origin to the port of exit subject to a maximum equalization of three cents (3¢) per 100 pounds.

EXCEPTIONS.—In respect of Chester, Pennsylvania, it is permitted to equalize carload rail traffic at Philadelphia, Pennsylvania, as an exception to the nine-cent (9¢) limit rule and exceeding the three-cent (3¢) maximum aforesaid.

Dollar Steamship Lines, Inc., Ltd.—Up to 250 net tons of iron or steel, handicap or nonhandicap items, per steamer from New York on "A" rate basis.

(Panama Pacific Line) American Lines Steamship Corporation.—Up to 250 net tons of iron or steel, handicap or nonhandicap items, per steamer from New York on "A" rate basis.

(Grace Line) Panama Mail Steamship Company.—Up to 250 net tons iron or steel out of handicap list per steamer from Philadelphia on "A" rate basis.

Specific equalization privileges on the quantities of iron and steel per steamer mentioned above are noncumulative, but the measure of port equalization allowed in these specific privileges on iron and steel mentioned above may be the actual difference between the rail rates from point of origin to port of exit, subject to a maximum of six cents (6¢) per 100 pounds.

Port Equalization is not permitted of any difference in the charges assessed or claimed, for delivery of freight by private, public, or Government-owned dray, truck, or similar conveyance; nor is port equalization permitted to any extent of charges assessed or claimed for transportation of vehicles or parts thereof, moving under their own power or through the medium of some other form of transportation on the public highways.

Port Equalization is not permitted in connection with traffic originating locally at another port from which service is maintained by any other Conference line.

Port Equalization shall not be used to offset any disabilities existing between carriers in the same port, and no equalization shall be made in respect of transfer, cartage, lighterage, wharfage, or unloading charges in the same port.

This was the rule which respondents in Nos. 139, 144, and 148, excepting Weyerhaeuser which is not engaged in westbound operations, sought to amend. By schedule filed by Agent Thackara to become effective September 5, 1934, the operation of which has been suspended until January 5, 1935, it is proposed to add exceptions to this rule so that on shipments moving over the line of either respondent—

Port equalization will apply * * * on all carload ratings or "any quantity" ratings in Sections 1, 2, and 6, hereof when shipments originate at interior points moving by rail to New York to the extent of the actual difference in carload rail rates from such point of origin to New York versus Atlantic port served by intercoastal carriers to which lowest rail carload rating applies, subject, however, to a maximum of 3 cents per 100 pounds, on all traffic except Iron and Steel as prescribed hereunder, and subject to maximum of 6 cents per 100 pounds, on carload shipments of Iron and Steel.

The maximum equalization of 6 cents will apply on all carload ratings herein under the general heading "Iron and Steel and articles of Iron and Steel namely."

Sections 1, 2, and 6 of Agent Thackara's tariff name class, general commodity, and special commodity rates, respectively. It is also the intention of the proposed exceptions that the maximum equalization of 6 cents would apply on other carload ratings specified therein but which are not necessary to detail.

The rule and exceptions as at present in effect are defective in several essential respects. Their lawfulness is now being considered in No. 126. It should suffice here to state that from such rule or exceptions, or proposed exceptions, or from the remainder of the tariff, it is impossible to ascertain the legally applicable rates. This department would not be warranted in permitting to become effective exceptions to the rule the purpose of which is to multiply such defect, which has been condemned hereinbefore.

The department finds that the proposed schedule has not been justified. An order will be entered requiring its cancellation and discontinuing this proceeding.

No. 151

By schedule filed to become effective October 11, 1934, respondent, a class "A" member of the United States Intercoastal Conference at the time the conference disbanded on July 31, 1934, proposed in essence to reduce its eastbound carload rates on oranges, lemons and grapefruit of 75 cents to 52.5 cents per box when packed in standard number one orange boxes, and from 80 cents to 57.5 cents per box when packed in standard number one lemon boxes. The operation of the schedule was suspended until February 11, 1935.

At the hearing respondent introduced no evidence in support of the proposed rates and expressed its desire to withdraw and cancel the suspended schedule.

The department finds that the proposed schedule has not been justified. An order will be entered requiring its cancellation and discontinuing this proceeding.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 111

THE NEW ORLEANS BOARD OF TRADE, LTD., v. LUCK-
ENBACH GULF STEAMSHIP COMPANY, INC., AND
GULF PACIFIC LINE

Submitted October 1, 1934. Decided December 4, 1934

Rate on bulk wheat Pacific Coast to Gulf ports not shown to be violative of Section 16 or Section 18 of Shipping Act, 1916. Complaint Dismissed.

W. B. Fox and G. P. Gaiennie for complainant.

Frank Lyon, C. W. Cook, and Ernest Holzborn for respondents.

W. N. McGehee and G. M. Nolen for Southern Railway Company; *Frank Wallace* for Illinois Central R. R., Yazoo & Mississippi Valley R. R. Company, and Gulf & Ship Island R. R. Company; *Gustave Breaux* for Southeastern Millers' Association; *A. F. Vandergrift* for Louisville Board of Trade, Interior Grain & Milling Conference, and Southeastern Millers' Association; *Joseph G. Kerr* for Louisville & Nashville R. R. Company, interveners.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

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

Complainant is a Louisiana corporation. Included in its membership are persons, firms, and corporations engaged in the purchase, merchandising, sale, and shipment of grain. Respondents are common carriers by water in intercoastal commerce subject to the Shipping Act, 1916, as amended. All interveners are in opposition to the complaint.

By complaint filed August 18, 1933, it is alleged that respondents' rate of \$5¹ per ton plus 3% surcharge for the transportation of wheat in bulk in lots of 500 tons or more from Pacific Coast ports to Gulf ports is unjust and unreasonable in violation of section 18 of the Shipping Act, 1916, and unduly prejudicial to such wheat and

¹ Surcharge discontinued June 30, 1934, and rate itself increased to \$5.15.

shippers thereof and unduly preferential of grain moving in the reverse direction and shippers thereof, in violation of Section 16 of that act.

Complainant shows that prior to January 1, 1934, respondents' rate on wheat in bulk in lots of 500 tons or more from Gulf to Pacific Coast ports was \$2.75 per ton plus surcharge of 3%. On that date, subsequent to the filing of the complaint, this rate was increased to \$5 plus 3% surcharge¹. The Pacific Northwest is a heavy production area for wheat. Wheat sells cheaper on the Pacific than on the Gulf Coast. Accordingly, wheat does not move westbound in the Gulf intercoastal trade. Respondents' rate of \$2.75 was established to induce movement. However, none ever moved via respondents' lines during the approximately 2½ years this rate was in effect. None has moved at respondents' rates later established.

Complainant shows that respondents' rate on corn in bulk in lots of 500 tons or more from Gulf to Pacific Coast ports is \$2.50 per ton. Prior to the fall of 1931 respondents' rate on this commodity was \$5 per ton. Respondents' witness testified that this \$5 rate attracted tramp competition which threatened the entire westbound rate structure, and that reductions in the rate on this commodity were made from time to time to meet such competition. A rail rate reduction on corn to 50 cents per 100 pounds from points of origin west of the Mississippi River contributed to the necessity for these reductions. Respondents' present rate of \$2.50 was established late in 1931. They have since carried a heavy westbound tonnage of corn. Upon the record continued maintenance by respondents of this depressed rate is necessary to meet tramp and rail competition and to preserve their westbound rate structure. No facts are of record that this rate has any effect upon the amount of the eastbound rate on wheat under attack or upon any of complainant's members.

As in the case of respondents' rates on westbound wheat and corn, their eastbound wheat rate here in issue is net to ship, cargo paying cost of loading, trimming, and unloading. It is less than the average rate of all eastbound commodities, exclusive of cost of stevedoring and other charges.

During the period October 1933 through January 1934 one of complainant's members shipped 3,000 tons of wheat from Pacific Coast to Gulf via respondents' lines at the rate of \$5 plus 3% surcharge. None has been carried by respondents since that period. During the period July 1933 to March 1934, 56,000 tons of bulk wheat were shipped in chartered steamers from Pacific Coast to Gulf by a com-

¹ Surcharge discontinued June 30, 1934, and rate itself increased to \$5.15.

¹ U. S. S. R. E.

petitor of one of complainant's members. Since that time the east-bound bulk wheat movement by charter has been unsteady. One small cargo moved during a period of six weeks preceding the hearing.

In December 1933 respondent Gulf Pacific Line chartered one of its laid-up vessels for the carriage of a full cargo of wheat from Pacific Coast to Gulf. Based on the number of tons of wheat carried, the cost to cargo for this particular charter movement was approximately \$4.35 per ton. Complainant's position is that respondents' rate under attack is unreasonable because "the rate by charter vessel is lower—it is so much lower for a full cargo that this rate is unreasonable * * * it should be on a parity with the full cargo rate * * * it should bear a relationship or be approximately the full cargo rate." Complainant presents nothing, however, to show why the full cargo charter cost per ton should be the criterion for the manifestly different kind of service of respondents in transporting 500-ton lots in liner vessels.

Complainant shows that rate for transportation of wheat in lots of 500 tons or more from Pacific Coast ports to North Atlantic and South Atlantic ports, a greater distance than to Gulf ports, is \$5.15 per ton. Respondents do not operate to any North Atlantic or South Atlantic port, and no facts as to the circumstances of such transportation to North and South Atlantic ports are presented.

The department finds that respondents' rate complained of has not been shown to be violative of section 18 of the Shipping Act, 1916, or of section 16 of that act. An order dismissing the complaint will be entered.

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DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 142

INTERCOASTAL RATES OF AMERICAN-HAWAIIAN
STEAMSHIP COMPANY AND WILLIAMS STEAMSHIP
CORPORATION

Submitted September 24, 1934. Decided December 10, 1934

Proposed schedules containing optional discharge provision on shipments of soap and soap products from Boston, Mass., to specified Pacific coast ports and naming rate of \$5 per 2,000 pounds, minimum weight 1,500 net tons, on soda ash and caustic soda from New York Harbor, N. Y., to such specified destinations on shipments originating at Wyandotte, Mich., and moving via water to New York Harbor as a unit, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

Frank Lyon and W. S. McPherson for respondents.

Harold S. Deming and E. J. Martin for Shepard Steamship Company; R. T. Mount, H. W. Warley, and E. J. Karr for Calmar Steamship Corporation; Edward B. Long, Jr., and F. W. S. Locke for Nelson Steamship Company; H. E. Manghum for Richmond, Va., Chamber of Commerce and Sacramento Chamber of Commerce; and George O. Griffith for Sterling Products Company, Inc., and National Industrial Traffic League.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Respondents are parties to Agent R. C. Thackara's Tariff SB-I No. 4. Items 3185 in section 2 and 6061 in section 6 thereof name rates of 46.5 and 37.5 cents per 100 pounds, minimum weight 24,000 pounds, respectively, for the westbound intercoastal transportation of soap and soap products in straight or mixed carloads from any of their Atlantic coast ports of loading, including Boston, Mass., to any of their Pacific coast ports of discharge. Rule 49 of the tariff provides that whenever there appear in sections 2 and 6 two or more rates on the same commodity the lowest will apply, and the 37.5-cent rate is legally applicable.

Rule 22 of the tariff reads:

Where specific reference to this rule is made in individual rate items of this tariff, carrier may issue one bill of lading to cover minimum lots as described therein, from one loading port on one ship for discharge at one or more Pacific Coast Port or Ports, subject to shipper's option of discharge, which must be exercised not less than twenty-four (24) hours prior to arrival of ship at ship's first Pacific Coast Port of Discharge. No back haul will be permitted under this rule.

Item 3185 and item 6061 do not refer to this rule, and therefore the optional discharge provision does not apply on shipments of soap or soap products embraced by these items.

By schedules filed to become effective August 27, 1934, the operation of which was suspended until December 27, 1934, respondents proposed to establish on shipments from Boston to Los Angeles Harbor, San Francisco and Oakland, Calif., Portland, Oreg., and Seattle and Tacoma, Wash., the following exception to rule 22 and items 3185 and 6061:

Individual lots of 40,000 pounds or more of soap, soap chips, soap powder, and/or washing powder, as provided for in items 3185 and 6061 of Agent R. C. Thackara's SB-I No. 4, will, when requested by shipper, be accorded the optional discharge privilege, as described in rule 22 thereof, when operating conditions and/or available stowage space permit; however, when this privilege is availed of, split delivery—as described in rule 17-D thereof—will not be permitted.

The proposed exception was published at the request of a manufacturer with plants at Hammond, Ind., and Boston. It was testified the products of this manufacturer move to Pacific coast destinations by rail from Hammond and by water from Boston. If the suspended schedules become effective, the optional discharge provision there contained will result in financial saving to the shipper in connection with warehouse charges at Pacific coast ports, a saving which it is said would induce this shipper to continue making shipments from Boston by water.

The optional discharge provision as contained in rule 22 applies on shipments of such commodities as barytes, clay, coal, ammoniated phosphate, gravel, sand, slag, and stone from any port of loading to any port of discharge. As contained in the proposed exception it would apply on soap and soap products there named in lots of 40,000 pounds instead of on lots of 24,000 pounds, which is the minimum weight applicable in connection with the 37.5-cent rate but only "when operating conditions and/or available stowage space permit." One of respondents starts loading at Boston. It is its intention to stow shipments of the shipper at whose request the proposed exception was published in such manner as to permit discharge at destinations without difficulty. Shipments of the commodities involved

from other points of loading could not be so easily stowed and unloaded. Respondents admit the proposed exception may lead them into difficult complications but direct attention to the fact that they "have it in at carrier's option." This means that the carrier would be the sole arbiter of the application of the proposed exception. The exception as proposed would create uncertainty on the part of competing shippers and lend itself to practices by respondents which are condemned by law.

By the schedules under suspension respondents also proposed to establish a rate of \$5 per 2,000 pounds, minimum weight 1,500 net tons, for the transportation of soda ash, in bags, and caustic soda, in iron or steel drums, from ship's tackle (hook) at New York Harbor to ship's tackle at the Pacific coast ports of discharge hereinbefore named on shipments originating at Wyandotte, Mich., and moving as a unit by water to ship's side of respondents' vessels in New York Harbor.

At present respondents publish rates of 46.5 cents per 100 pounds on soda ash, in bags or barrels, or caustic soda, in cans, boxed, and/or in metal drums; and 30 cents per 100 pounds on soda ash or caustic soda without any packing restrictions. A minimum weight of 24,000 pounds is applicable in connection with these rates, which apply in straight or mixed carloads from any point of loading on the Atlantic coast to any point of discharge on the Pacific coast. As these rates are contained in section 2 of the tariff, rule 49 thereof does not apply. Nevertheless, under accepted rules of construction the 30-cent rate applies regardless of how the commodity is packed for shipment.

The record is clear that only one shipper located at Wyandotte, under contract for delivery of soda ash on the Pacific coast in large quantities, is in position to ship that commodity in lots of 1,500 tons. Although respondents regard the 30-cent rate with a minimum of 24,000 pounds as too low, the proposed rate is in the nature of a special rate to move part of the tonnage mentioned. 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 department finds that the suspended schedules have not been justified. An order will be entered requiring its cancelation and discontinuing this proceeding.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 149

WESTBOUND INTERCOASTAL RATES ON DATES, FIGS,
AND CITRUS FRUIT PEEL

Submitted October 3, 1934. Decided January 8, 1935

Proposed schedules naming rate for westbound intercoastal transportation of dates, figs, and citrus fruit peel, in straight or mixed carloads, found not justified, but without prejudice to the filing of a new schedule in conformity with the views expressed herein. Suspended schedules ordered canceled and proceeding discontinued.

Oliver P. Caldwell, Godfrey MacDonald, W. S. McPherson, and George E. Talmage, Jr., for respondents.

E. B. Long, Jr., and F. W. S. Locke for Nelson Steamship Company.

H. W. Warley for Calmar Steamship Corporation.

George Shapro for Hill Brothers Company.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Respondents are parties to Agent R. C. Thackara's Tariff SB-I No. 4 naming westbound intercoastal rates. By schedules filed to become effective on September 29, October 1, and October 12, 1934, the operation of which has been suspended until January 29, 1935, Agent Thackara proposed to reduce the westbound intercoastal rate of 92½ cents per 100 pounds, minimum weight 24,000 pounds, on dates, figs, and peel of citron, grapefruit, lemon or orange, in straight or mixed carloads, to 60 cents per 100 pounds, minimum weight 24,000 pounds, when shipped from Atlantic ports on vessels of the American-Hawaiian Steamship Company, (Grace Line) Panama Mail Steamship Company, Luckenbach Steamship Company, Inc., and (Panama Pacific Line) American Line Steamship Corporation. No change was proposed in the rate on these commodities shipped from Atlantic ports on vessels of other intercoastal carriers. Rates are stated in cents per 100 pounds.

The record deals principally with citron peel produced in Italy and dates produced in Persia. Both commodities are shipped loose in wooden boxes over foreign flag lines to New York, N. Y., direct. They are there repacked by jobbers and some reshipped over the lines of respondents to points on the Pacific coast of the United States. These commodities also move loose in wooden boxes to California and other Pacific coast destinations, the citron peel by Italian steamers direct, and the dates on Japanese steamers by way of the eastern route direct or on other foreign flag steamers by way of European ports to Atlantic ports of the United States thence over intercoastal lines, including those of respondents.

The department is here concerned only with rates applicable on these commodities as repacked and reshipped from New York to California and other destinations on the Pacific coast. The movement of dates to such destinations is considerably larger than that of citron peel. It was testified that one jobber of dates shipped more than 1,000,000 pounds in 1931, and approximately 707,000 pounds in 1932 and 362,000 pounds in 1933. The decrease is attributed in large part to increased competition offered by jobbers located on the Pacific coast.

Tariffs containing the rates applicable on the transportation of these commodities from points of origin to New York, or to Pacific coast destinations whether shipped direct or by transshipment at European ports, are not filed with the department. Such rates are quoted in foreign currencies and apparently apply on any quantity. On dates by way of European ports the rate approximates 64 cents to New York and 83 cents to Pacific coast destinations. The rate to Pacific coast destinations over the eastern route is said to be lower than by way of European ports. On citron peel the rate from Italy approximates 73 cents to New York and \$1.12 to Pacific coast destinations. The present combination of rates to Pacific coast destinations by way of New York therefore approximates \$1.565, minimum 24,000 pounds, on dates from Persia; and \$1.655, minimum 24,000 pounds, on citrus peel from Italy.

The proposed intercoastal rate of 60 cents is intended principally to meet competition by direct steamers. It is compared with a rate of 56.5 cents, minimum 30,000 pounds, maintained by respondents for the eastbound intercoastal transportation of dried fruit and vegetables. A witness for one of respondents testified that shipments of dates from New York were largely confined to the four intercoastal carriers named herein. Other intercoastal carriers did not appear in opposition to the proposed change. Upon this record and subject to the exception hereinafter noted the proposed reduc-

tion in the rate from 92.5 cents to 60 cents per 100 pounds has been justified.

In addition to the 92.5-cent rate, which respondents seek to reduce, the tariff contains on these commodities a rate of 87.5 cents, minimum 40,000 pounds, in straight or mixed carloads to Pacific coast destinations. If the suspended schedules are allowed to become effective there would exist conflicting rates of 60 cents, minimum 24,000 pounds, and 87.5 cents, minimum 40,000 pounds, for the same transportation. Normally when rates are published, based on different minimum weights, the higher rate is made applicable in connection with the lower minimum weight. The record presents no justification for the reversal of this rate-making plan. Conflicts of this character should be avoided. In such circumstances the rate which results in the lower charge applies, and the higher rate based on the higher minimum weight would never be applied. It therefore has no place in the tariff. The department cannot lend approval to such conflicts in rates.

The department finds that the suspended schedules have not been justified. This finding is without prejudice to the filing of a new schedule in conformity with the views expressed herein. An order will be entered requiring the cancelation of the suspended schedules and discontinuing this proceeding.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 150

EASTBOUND INTERCOASTAL RATES ON SQUASH SEED,
CARLOADS

Submitted October 3, 1934. Decided January 18, 1935

Proposed rate for eastbound intercoastal transportation of squash seed, in bags, in carloads, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

W. S. McPherson, Godfrey MacDonald, and Oliver P. Caldwell for respondents.

E. B. Long, Jr. and F. W. S. Locke for Nelson Steamship Company.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed by Agent R. C. Thackara on behalf of American-Hawaiian Steamship Company and Williams Steamship Corporation to become effective October 1, 1934, of Panama Mail Steamship Company to become effective October 11, 1934, and of Luckenbach Steamship Company to become effective October 15, 1934, it is proposed to establish a carload rate of 55 cents per 100 pounds for the eastbound intercoastal transportation of squash seed, in bags, minimum weight 24,000 pounds, via or in connection with the line of each such carrier, respondent herein. The operation of the first two schedules was suspended until February 1 and of the last schedule until February 15, 1935.

Squash is canned in large quantities on the Pacific Coast. The marketing of the seed of the canned squash, practically a waste product, for human consumption is in process of development. The volume of traffic to Atlantic Coast destinations for that purpose is said to depend upon a rate that would permit a low sale price.

Item 1025 of Agent Thackara's Tariff SB-I No. 5, in which respondents and other carriers participate, names a rate of 113.5 cents per 100 pounds applicable on squash seed, in bags, in straight or mixed carloads, minimum weight 24,000 pounds. The application of this rate is not restricted. It governs regardless of the quality or

use to which the seed is applied, and applies on the transportation here involved. It is the purpose of respondents to continue this rate on the grade of seed used for planting purposes and to establish the new rate of 55 cents on the grade of seed used for human consumption. Inasmuch as the application of the proposed rate is also unrestricted and would govern on a carload of any grade of seed offered for shipment, if allowed to become effective an anomalous tariff situation would be created which the Department is not warranted in permitting.

An order will be entered requiring the cancellation of the suspended schedules and discontinuing this proceeding.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 173

TERMINAL CHARGES AT NORFOLK, VIRGINIA
AGREEMENT NO. 3488

Submitted January 29, 1935. Decided February 23, 1935.

Agreement covering charges for terminal services on traffic moving by small boat and truck found not to be unlawful. Agreement canceled as to two of the signatory terminal companies which filed notice of withdrawal.

Charles L. Kaufman for parties signatory to Agreement No. 3488. *Braden Vandeventer* for Roosevelt Steamship Company, Dichmann, Wright & Pugh, Inc., and Norton & Ellis, Inc.; *Charles B. Godwin, Jr.*, for T. H. Rash, Inc., and Hampton Roads Transportation Company; *John W. Oast, Jr.*, for Norfolk, Baltimore & Carolina Line, Inc.; *H. H. Rumble* for Buxton Lines, Inc.; *W. A. Cow* for State Port Authority of Virginia; *H. E. Manghum* for Richmond Chamber of Commerce; *H. E. Boyd* for Wilmington Terminal Warehouse Company; *W. T. Turner* and *C. L. Candler* for Southern Railway Company; *J. W. Perrin* for Atlantic Coast Line Railroad.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By its order dated November 16, 1934, the Department approved an agreement between Norfolk Tidewater Terminals, Incorporated, Jones Cold Storage and Terminal Corporation, Security Storage and Safe Deposit Company, Incorporated, H. B. Rogers, Incorporated, and Southgate Norfolk Pier, Incorporated, filed pursuant to the provisions of Section 15 of the Shipping Act, 1916, covering charges to be assessed and collected at their respective piers and terminals in Norfolk and Portsmouth, Virginia, on all cargo traffic other

than that received from or delivered to any railroad. This agreement was given No. 3488 and the charges specified therein were made effective by the parties thereto on December 15, 1934. Similar charges were simultaneously announced by the railroads for application at their terminals at Norfolk.

Subsequent to the issuance of the order of approval, a formal petition was filed by Norton and Ellis, Incorporated, requesting that the Department's action be set aside and a new hearing granted, and alleging, in substance, that the agreement is unjustly discriminatory or unfair as between carriers and shippers, and unjustly discriminates against the port of Norfolk because similar charges have not been made effective at competing ports on the Atlantic Coast. A number of informal protests were also received alleging serious injury to the port of Norfolk by diversion of traffic to other ports as a result of the charges made effective under the agreement. A hearing was duly held at which all interested parties were accorded full opportunity to present facts in support of the allegations that Agreement No. 3488 is violative of provisions of the Shipping Act, 1916.

The testimony of record indicates some diversion of traffic to other terminals within the port of Norfolk in order to avoid the payment of higher charges at the terminals subscribing to the agreement, but with the exception of a shipment of 53 tons of cotton waste for export to Sweden which it is testified was diverted from Norfolk to Charleston, South Carolina, the record contains no evidence of actual diversion of traffic to other ports. Statements of record as to threatened diversion or the probability of future diversions of traffic if the charges remain effective do not justify a finding that the agreement is unlawful.

The record contains no evidence of discrimination between shippers based on actual shipments handled at any of the terminals under the agreement. In support of the allegation that the agreement is unjustly discriminatory as between carriers, it is shown that, because of the limited accommodations afforded by other terminals within the port at which lower charges are assessed, a number of vessels must continue to use the terminals which subscribe to the agreement and perhaps suffer the loss of traffic diverted to such other terminals. As the parties to the agreement are not in any way connected with and do not exercise any control over the terminals at which lower charges are assessed, no discrimination is attributable to them so long as they uniformly apply at their own terminals the charges covered by their agreement.

The record does not justify a finding by the Department that Agreement No. 3488 is violative of any provision of the Shipping Act, 1916.

By notice dated January 19, 1935, received January 24, 1935, Norfolk Tidewater Terminals, Incorporated, advised the Department that it desired to withdraw from and be relieved of the obligations imposed in said agreement, and requested the Department's approval thereof. Application for permission to withdraw from the agreement was also submitted by Security Storage and Safe Deposit Company, Incorporated, by letter dated January 26, 1935, received January 28, 1935. In view of these notices of withdrawal, an order modifying Agreement No. 3488 by the elimination of such parties will be entered.

1 U. S. B. B.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 161

EASTBOUND INTERCOASTAL RATES FROM MOUNT
VERNON AND STANWOOD, WASHINGTON

Submitted December 28, 1934. Decided February 25, 1935

Cancellation of so-called terminal rates from Mount Vernon and Stanwood, Wash., to intercoastal destinations on the Atlantic Coast found justified. Carriers participating in through routes for the transportation of property by water from Mount Vernon or Stanwood, Wash., to intercoastal destinations on the Atlantic Coast required to file schedules with the department showing all the rates and charges for or in connection with such transportation and agreements relating thereto.

Joseph J. Geary for respondents operating beyond Seattle, Wash., and interveners.

Anna Grimison for Skagit River Navigation & Trading Company.

C. S. Connolly and *H. O. Malsbury* for protestants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective October 31 or November 1, 1934, American-Hawaiian Steamship Company, Luckenbach Steamship Company, Inc., McCormick Steamship Company, Nelson Steamship Company, Weyerhaeuser Steamship Company, Pacific-Atlantic Steamship Co., Williams Steamship Corporation, Panama Mail Steamship Company, and States Steamship Company, herein-after collectively referred to as respondents operating beyond Seattle, proposed to cancel so-called terminal rates from Mount Vernon and Stanwood, Wash., to intercoastal destinations on the Atlantic Coast. Upon protests of Carnation Company and others the operation of the schedules was suspended until February 28, 1935. The record in No. 126, *Intercoastal Investigation*, is stipulated into the record.

Mount Vernon, on the Skagit River about 11 miles from the mouth of the North Fork; and Stanwood, at the mouth of the Stillaguamish River where the West Pass and the South Pass join, by water are approximately 71 miles and 51 miles, respectively, north of Seattle, Wash. Because of shallow water and other unfavorable navigation conditions it is not possible for vessels of respondents operating beyond Seattle to call at either point. Skagit River Navigation & Trading Company, hereinafter referred to as "Skagit River", which operates vessels of shallow draft, stern-wheel, river type is the only respondent calling at those points.

Protestants are the principal shippers by water from Mount Vernon and Stanwood to intercoastal destinations on the Atlantic Coast. During the 12 months ended November 1, 1934, their shipments consisting principally of canned peas and canned milk, aggregated about 8,110 tons, of which 5,215 tons were shipped by one protestant. The movement of canned peas by water to the intercoastal destinations involved is generally between the latter part of July and the end of March. Canned milk moves only to supply occasional demands.

Prior to August 18, 1934, neither Mount Vernon nor Stanwood was shown in any tariff filed with the department and therefore respondents did not have legal rates in force for application therefrom. Between that date and September 14, 1934, respondents operating beyond Seattle extended the application of their eastbound rates to include Mount Vernon and Stanwood to meet similar rates applicable since September 30, 1933, via Calmar Steamship Corporation. These are the rates sought to be canceled. They are contained in Agent R. C. Thackara's tariff SB-I No. 5 and are published for application direct via the line of each respondent operating beyond Seattle, even though their vessels cannot call at Mount Vernon or Stanwood, or for application in conjunction with Skagit River, except in the case of Panama Mail Steamship Company where they are published for application via Skagit River to Seattle thence via McCormick Steamship Company, Nelson Steamship Company, Pacific Steamship Lines, Ltd., or Chamberlin Steamship Company Ltd., to San Francisco, Cal., and Panama Mail Steamship Company to final destinations, and in the case of States Steamship Company where they are published for application via that line direct or in conjunction with Chamberlin Steamship Company, Ltd., Schafer Brothers Steamship Lines, Pacific Steamship Lines, Ltd., or Sudden & Christenson to San Francisco thence via States Steamship Company to final destinations. Skagit River, the only respondent calling at Mount Vernon or Stanwood, is not named in the through route via which the rates of States Steamship Company apply.

Respondents operating beyond Seattle assume the rates for transportation of Skagit River as part of their operating expenses. In addition Panama Mail Steamship Company and States Steamship Company assume as an operating expense the rates for transportation of the line performing the service from Seattle to San Francisco. This is done on the theory that if the transportation service were performed by them directly the cost thereof would be charged to operations. The through bills of lading, which are issued by respondents operating beyond Seattle, only show the name of the issuing carrier and do not disclose the name of any other carrier participating in the transportation. This method of constructing through rates is not sanctioned by the department.

Protestants claim that intercoastal shippers located at Mount Vernon and Stanwood compete with similar shippers located at Sacramento, Cal. They compare navigation conditions from Mount Vernon and Stanwood with those from Sacramento, and as respondents operating beyond Seattle apply so-called "terminal rates" from Sacramento, where their vessels do not call, they urge on brief that "the Department can not altogether with fairness and justice deny terminal rates to Mount Vernon-Stanwood until such time as the propriety of terminal rates from other outports is disposed of. * * * Until such time as these intercoastal carriers confine their terminal rates to ports which they actually serve direct with their own ships they cannot, without unduly discriminating against Mount Vernon-Stanwood, charge higher than the terminal rates from the latter points." What constitutes discrimination is a question of fact to be determined in each particular instance and protestants have failed to establish the essential facts in this case. The lawfulness of extending the application of terminal rates generally, and to Sacramento in particular, is under consideration in No. 126 and in No. 119, *Howard Terminal et al. v. Calmar Steamship Corporation et al.* The right to initiate rates inheres in the carriers. Such rates may be changed by them unless in doing so they violate the law. No such violation is here shown.

As to the traffic moving via States Steamship Company it should be stated that a tariff which purports to publish through routes but does not show as participating therein a carrier which forms a necessary link is in direct contravention of the provisions of the statute.

Section 15 of the Shipping Act, 1916, imposes upon every common carrier by water the obligation of immediately filing with the department a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, among other things, fixing or regulating transportation

rates; giving or receiving special rates or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" as used in this section includes understandings, conferences, and other arrangements. All such agreements, modifications, or cancellations are lawful only when and as long as approved by the department, and before approval or after disapproval, it is unlawful to carry out, in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

A search of the files of the department fails to disclose copy of any agreement for the transportation of shipments from Mount Vernon or Stanwood via the through routes composed of Skagit River and American-Hawaiian Steamship Company or Williams Steamship Corporation; or of Skagit River and McCormick Steamship Company, Nelson Steamship Company, Pacific Steamship Lines, Ltd., or Chamberlin Steamship Company, Ltd., and Panama Mail Steamship Company; or of Skagit River and Chamberlin Steamship Company, Ltd., Schafer Brothers Steamship Lines, Pacific Steamship Lines, Ltd., or Sudden & Christenson and States Steamship Company.

Section 2 of the Intercoastal Shipping Act, 1933, requires every common carrier by water in intercoastal commerce to publish, post, and file 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. A through route contemplates a through rate which may be the sum of separately established factors or an amount jointly published by all the carriers participating in the transportation. The cancellation of a joint rate does not in and of itself cancel the through route. If the established through routes from Mount Vernon or Stanwood to intercoastal destinations on the Atlantic Coast are to be continued, the carriers participating therein must comply with the requirements of Section 2 of the Intercoastal Shipping Act, 1933.

The department finds that the suspended schedules have been justified. An order will be entered vacating the suspension order and discontinuing this proceeding.

In view of the positive obligations imposed by Sections 2 of the Intercoastal Shipping Act, 1933, and 15 of the Shipping Act, 1916,
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upon respondents and Chamberlin Steamship Company, Ltd., Schafer Brothers Steamship Lines, Pacific Steamship Lines, Ltd., and Sudden & Christenson, which are not named in the suspension order, no order relating to the filing of schedules or agreements regarding through transportation from Mount Vernon and Stanwood to inter-coastal destinations on the Atlantic Coast is deemed necessary.

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DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 162

INTERCOASTAL RATES TO AND FROM BERKELEY
AND EMERYVILLE, CALIFORNIA

Submitted January 15, 1935. Decided March 5, 1935

Establishment of joint rates for intercoastal transportation of property between Berkeley or Emeryville, Cal., and points on the Atlantic Coast found justified.

Raymond F. Burley and John M. Athowe for respondents.

Allan P. Matthew, John O. Moran, Markell C. Baer, Robert M. Ford, W. R. Jones, Edwin G. Wilcox, T. G. Differding, Joseph J. Geary, and Frank M. Chandler for protestants.

Gwyn H. Baker, H. M. Wade, Fred C. Hutchison, and A. W. Brown for interveners.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective November 9, 1934, the operation of which has been suspended until March 9, 1935, respondents, McCormick Steamship Company and Berkeley Transportation Company, proposed to establish joint rates for intercoastal transportation of property between Berkeley or Emeryville, Cal., and points on the Atlantic Coast with transshipment at San Francisco, Cal.

Berkeley, on the eastern shore of San Francisco Bay between Oakland and Richmond, Cal., is approximately 7 miles by water northeast of San Francisco. The only dock there available to shippers generally, known as the Berkeley Municipal Wharf, is leased by the City of Berkeley to Berkeley Port Terminal, Inc., a private organization. It is about 1.5 miles from Outer Harbor Municipal Terminals at Oakland and approximately 4 miles from Richmond. Emeryville, also on the eastern shore of San Francisco Bay, is between Berkeley and Oakland. The only dock at this point, known as

Emeryville Wharf, is owned by The Paraffine Companies, Inc., and is not available to other shippers. The water in front of these points is shallow. Soundings taken one week before the hearing showed the depth at Berkeley Municipal Wharf at low tide ranged from 5.4 to 8.3 feet, and at Emeryville Wharf at low tide from .3 to 2.4 feet.

Outbound shipments from Berkeley or Emeryville to points on the Atlantic Coast are switched or trucked to Oakland, or move by barges of Berkeley Transportation Company to San Francisco, at which points they are delivered to intercoastal carriers, including McCormick Steamship Company, for transportation beyond. There are no through arrangements or rates on shipments barged to San Francisco. These operations are reversed on inbound shipments. Inbound shipments also move to Berkeley by rail from San Francisco.

Industries located at Berkeley compete with industries at Oakland. The Paraffine Companies, Inc., manufactures paints, roofing, linoleum, and felt base floor covering at its plant at Emeryville. Its principal competitor in the distribution of its products in this general territory, except linoleum, is the Certain-teed Products Corporation with a plant at Richmond. Some of the raw materials used by both competitors are obtained from points on the Atlantic Coast. The Paraffine Companies, Inc., sells linoleum and other floor covering on the Atlantic Coast in competition with eastern manufacturers. Its inbound shipments of raw materials aggregate from 300 to 400 tons and its outbound shipments to eastern markets aggregate from 600 to 1,000 tons per month. The inbound shipments generally move through Oakland. When urgently needed they are barged direct from San Francisco. The outbound shipments are generally barged direct to that point. McCormick Steamship Company maintains intercoastal terminal rates from and to San Francisco, Oakland, and Richmond. It also participates in joint intercoastal rates from and to these points with certain San Francisco Bay carriers. Interchange of traffic with these carriers is made at San Francisco. The rates, whether terminal or joint, are the same from and to all these points. Under the proposed schedules joint intercoastal rates similar in amounts to those from and to these other points would apply from and to Berkeley or Emeryville.

Protestants urge that if the proposed rates become effective they will result in undue and unreasonable preference and advantage to Berkeley and Emeryville and shippers and receivers of intercoastal freight located there to the prejudice and disadvantage of Oakland and Richmond and shippers and receivers of intercoastal freight located there. This is based on the fact that at present the rail rate

from or to the Oakland wharf and the charges for car loading or unloading there, or the truck charges from or to that point, are the same regardless of whether the traffic originates in or is destined to the Oakland, Berkeley, or Emeryville switching districts, and under the proposed schedules the only charge of that character would be for trucking from or to the pier at Berkeley. Thus while under the proposed schedules shippers at Berkeley or Emeryville would pay the same intercoastal rate as shippers at Oakland or Richmond, they would pay less in the aggregate if consideration is given to the additional charges of the character described. However this does not constitute preference or advantage of the character condemned by the Shipping Act of 1916.

Protestants further urge that Berkeley and Emeryville are shallow-water points and are not entitled to intercoastal "terminal rates." Also that the department has no jurisdiction over Berkeley Transportation Company and the proposed tariffs are illegal. The term "common carrier by water in intercoastal commerce" as used in the Intercoastal Shipping Act, 1933, includes 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. Every such common carrier is enjoined to publish, post, and file with this department 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. The act makes no distinction whatsoever between points on deep water and points on shallow water. The Berkeley Transportation Company is a common carrier by water. It is true its operations are limited to points on San Francisco Bay, but by joining in through routes and through rates for intercoastal transportation, as here proposed, it becomes subject to the act. It is the policy of the law that every intercoastal route regardless of how constituted and every service for or in connection with intercoastal transportation shall have a published rate on file with the department. A "terminal rate" is that between two intercoastal points when the entire transportation service is performed by a single carrier. If a through route has been established by two or more carriers the law contemplates the establishment of "through rates", which may be the sum of separately established factors or an amount jointly published by all the carriers participating in the transportation. As is required by section 15 of the Shipping Act, 1916, respondents have filed copy of agreement entered into by them, which has been ap-

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proved, for the establishment of through routes to facilitate inter-coastal commerce from and to the points here involved and for the establishment of joint rates to apply thereon. The proposed schedules, filed in furtherance of this agreement, plainly indicate that the rates are joint and not terminal rates. The record does not indicate that such rates are in violation of law.

The department finds that the suspended schedules have been justified. An order will be entered vacating the suspension order and discontinuing this proceeding.

It is the duty of carriers to provide adequate terminal facilities, and as any shipper is entitled to make use of the rates from and to Emeryville, respondents are expected immediately to meet this obligation at that place.

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DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 143

PABLO CALVET & COMPANY

BALTIMORE INSULAR LINE, INC., BULL INSULAR LINE, INC., LYKES BROTHERS STEAMSHIP COMPANY, INC., MOBILE, MIAMI & GULF STEAMSHIP COMPANY, AND ATLANTIC AND CARIBBEAN STEAM NAVIGATION COMPANY

Submitted March 6, 1935. Decided March 26, 1935

Respondents' conference rule not shown to be violative of any provision of Shipping Act, or to be unfair, or to operate to detriment of commerce of the United States. Complaint dismissed.

A. P. Calvet for complainant.

James E. Light for Bull Insular Line, Inc., and *J. P. Case* for Waterman Steamship Corporation (Mobile, Miami & Gulf Steamship Company).

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Complainant is a partnership located in New York City. It is engaged in the business of importing and exporting raw materials.

Respondents are common carriers by water operating between Atlantic and Gulf ports of the United States on the one hand and Puerto Rican ports on the other, and comprise the membership of the United States Atlantic and Gulf/Puerto Rico Conference, a cooperative organization which functions pursuant to a conference agreement approved under Section 15 of the Shipping Act.

Under individual through billing arrangements with various transatlantic carriers, respondents accept shipments from Puerto Rico to European ports, transshipping them to the transatlantic carriers at their Atlantic and Gulf ports. Under these through billing ar-

rangements, the carriers party thereto assess through rates lower than the combination of the local rate Puerto Rico to the United States and the local rate from the United States to Europe. Complainant alleges that refusal by respondents under a conference rule to issue new bills of lading at their Atlantic and Gulf ports on shipments made locally from Puerto Rico to such Atlantic and Gulf ports, the new bills of lading to show through transportation and through rates from Puerto Rico to European ports, is detrimental to its business and to commerce of the United States.¹ Using in illustration a shipment of annatto seed transported by Bull Insular Line on a local bill of lading from Aguadilla to New York, the complaint is that—

Complainant offered to surrender full set of local bill of lading from Puerto Rico to New York in exchange for a new bill of lading showing the European terminal port (Copenhagen) desired. Complainant further requested the carrier to make out the new bill showing complainant as shippers, the complainant wishing to keep secret to their European consignees the name of the original shippers in Puerto Rico. Complainant offered to pay the through freight as per established through rate. The carrier refused to comply with this request, alleging that this request was against respondent's conference rules. This was confirmed by said conference. This rule of respondent's conference is in detriment of complainant's business and of the commerce of the United States.

Generally the rates under the through billing arrangements are the same as those of direct line carriers from Puerto Rico to Europe, and complainant must secure such rates in order to sell Puerto Rican commodities in the European markets. Because of a refusal by respondent Bull Insular Line to furnish new bill of lading as requested, complainant lost a sale of annatto seed in Copenhagen. Other sales under similar circumstances have also been lost by complainant due to similar refusals.

The shipment of annatto seed used by complainant for illustration was, through exchange of cables, purchased by complainant from a dealer in Aguadilla, Puerto Rico, f. o. b. that port. It was carried for complainant to New York on Bull Insular Line local bill of lading. Complainant's request for new bill of lading was first conveyed to respondent two days after vessel's arrival in New York and after discharge had been completely effected. Complainant admits respondent fulfilled its bill of lading obligation in effecting delivery of the shipment in New York.

The question presented for determination is whether after respondents have completely fulfilled every obligation of their bill

¹ By Section 15 of the Shipping Act the Department is empowered to disapprove, cancel, or modify any agreement within the purview of that section, whether or not previously approved by it, which it finds, among other things, to be unfair as between shippers, exporters, or importers, to operate to the detriment of commerce of the United States, or to be in violation of the Shipping Act.

of lading contracts with complainant to furnish transportation of shipments from Puerto Rico to United States ports they shall be required, as to such of those shipments as complainant may sell abroad, to contract further and differently. The advantages which would result to complainant under such requirement would be—time after local transportation transaction has been consummated within which to effect sale abroad, use of respondents' docks pending such sale, and a lower charge than is applicable for the two local transportation services actually received.

As illustrated by the consignment of annatto seed, the contract of carriage was completed at New York, and any further carriage of complainant's shipments involved a new and independent transportation transaction. The advantages complainant seeks are manifestly not in any respect demandable of respondents as a matter of right. It follows that respondents' refusal to rebill and apply lower through rates on the reshipped cargo concerned cannot be considered to deprive complainant of any right or privilege to which it is entitled. Moreover, the issuance by respondents of through bills and according through rates for the two local transportation movements concerned in this proceeding is prohibited by Section 16 of the Shipping Act, which makes unlawful the furnishing by subject carriers of transportation at less than their regular rates through false billing or by other unfair device or means.

The Department finds that respondents' rule, in observance of which their refusal to rebill and apply lower through rates on re-shipment cargo is made, has not been shown to be violative of any provision of the Shipping Act, 1916, as amended, or to be unfair, or to operate to the detriment of commerce of the United States within the meaning of Section 15 of that Act. An order dismissing the complaint will be entered.

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DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 176

PHILADELPHIA PORT EQUALIZATION

Submitted March 26, 1935. Decided April 25, 1935

Schedule cancelling port equalization rule at Philadelphia, Pa., and establishment of identical rule at New York, N. Y., on iron and steel moving in intercoastal commerce cancelled by respondent, and proceeding discontinued.

Carleton T. Hepting for respondent.

F. W. S. Locke for Nelson Steamship Company, protestant.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Under exception to rule 9 of Agent R. C. Thackara's tariff SB-I no. 4, Panama Mail Steamship Company shrinks its rate for intercoastal transportation of iron and steel from Philadelphia, Pa., as to equalize the cost to the shipper for the overland transportation of the first 250 tons from inland points of origin to any Atlantic coast port served by an intercoastal carrier, when the overland rate is 9 cents per 100 pounds or more. By schedule filed to become effective February 10, 1935, the operation of which was suspended until June 10, 1935, respondent proposed to cancel such exception and establish an identical rule for application at New York, N. Y.

Subsequent to hearing, under special permission granted by the department, respondent filed a supplement to the tariff, effective March 28, 1935, canceling the proposed rule.

The lawfulness of rule 9 is presented for determination in no. 126, Intercoastal Investigation, undecided. In view of respondent's action, an order will be entered vacating the suspension order and discontinuing this proceeding.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 177

INTERCOASTAL RATE ON SILICA SAND FROM BALTIMORE, MD.

Submitted April 12, 1935. Decided May 1, 1935

Proposed schedule naming reduced rate for intercoastal transportation from Baltimore, Md., to certain Pacific coast destinations of silica sand, in bulk, in lots of not less than 500 net tons, for manufacture of glass and glassware, found not justified, but without prejudice to filing of new schedule in conformity with views expressed herein. Suspended schedule ordered canceled and proceeding discontinued.

F. W. S. Locke for respondent.

Roscoe H. Hupper for protestants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedule filed to become effective February 10, 1935, the operation of which has been suspended until June 10, 1935, Nelson Steamship Company proposed to reduce its rate of \$2.73 per net ton to \$2.50 per net ton for intercoastal transportation from Baltimore, Md., to Alameda, Los Angeles Harbor, Oakland and San Francisco, Cal., Portland, Ore., and Seattle and Tacoma, Wash., of silica sand, in bulk, in lots of not less than 500 net tons, for manufacture of glass and glassware.

The proposed rate, to expire July 31, 1935, is for application only when a contract has been executed by shipper or consignee in a form, also contained in the proposed schedule, reading in part as follows:

1. THE SHIPPER, in consideration of the agreement of the CARRIER hereinafter set forth, agrees to ship by steamers of the Nelson Steamship Company, operating from the port of Baltimore, Md., all of the SILICA SAND shipments which the SHIPPER shall make between the date hereof and July 31, 1935, inclusive, from the aforementioned port to the following * * * terminal ports: * * * quantities being estimated at approximately
carloads of net tons.

The shipments contemplated in this clause shall include not only any such shipments made directly by the SHIPPER and in its name, but also any such shipments, however and by whomsoever made, if for the benefit and on behalf of the SHIPPER.

2. In consideration of said agreement of the SHIPPER, the CARRIER agrees to transport * * *, at the following rate * * * : * * *

Minimum lots of five hundred (500) net tons from one shipper * * *, on one steamer for optional discharge at one or more Pacific Coast ports enumerated in Article 1 of this agreement, which shall provide that at any individual port the amount to be discharged shall not be less than two hundred and fifty (250) net tons; the option to be declared forty-eight hours prior to expected arrival of steamer at Los Angeles Harbor, California.

Subject to prior booking arrangements.

The SAND named in this item to be delivered into the steamer's hold over a loading tipple, cost of such loading, trimming and leveling for account of shipper. Entire parcel to be available for steamer on twenty-four hours notice to shipper of steamer's readiness.

The entire quantity to be delivered continuously until completed and delivery to be made as fast as steamer can receive.

Cost of discharging account of steamer, and receivers to accept as fast as steamer can discharge.

3. If the SHIPPER shall make any shipments in violation hereof, this agreement shall immediately become null and void as to all future shipments, and thereupon the SHIPPER shall be liable to the transporting CARRIER for payment of additional freight on all quantities theretofore shipped with the CARRIER since the execution of this agreement, in the amount of the difference between the rate named hereon, and the "B" line rate named in R. C. Thackara's Westbound Freight Tariff 1-B, SB-I No. 4, supplements or reissues thereof, Item 3102-A, at the time of such shipments.

The record indicates the purpose of the suspended schedule is to enable one producer of silica sand with plants in West Virginia, Pennsylvania, and New Jersey to meet the competition of producers located in Belgium who are said to be able to deliver silica sand at the Pacific coast destinations named at about \$5.22 a net ton. This amount includes not only the price of the sand and the ocean rate but also the import duty and cost of loading it into rail equipment at the port of entry. The record also shows no silica sand adapted to the manufacture of glass such as that produced in West Virginia, Pennsylvania, New Jersey, or Belgium, is produced on the Pacific coast.

On behalf of the shipper in question it was testified it shipped approximately 3,000 tons in 1933 and 6,000 tons in 1934 of sand from its plants to Pacific coast destinations; and that "with a 30-day cancellation clause in the tariff, we are at a disability that we would never overcome, even though we could undersell Belgium, for the simple reason that the agents for the European sand make great capital of the fact that we are unable to say to a buyer, 'This cost will be firm to you over a period of months.' * * * With one single exception, in our opinion, that argument has kept us from getting the business."

While under the Intercoastal Shipping Act, 1933, no change may be made in the published rates for intercoastal transportation earlier

than thirty days after date of posting and filing of the new rate with the department, unless otherwise authorized by the department, this does not mean that intercoastal rates are changed every thirty days. The particular rate sought to be reduced has been continuously in effect since June 1, 1933, if consideration is given to a 3 percent surcharge rule cancelled March 21, 1934.

Protestants are American-Hawaiian Steamship Company and nine other common carriers by water engaged in intercoastal transportation in competition with respondent. The contract contained in the schedule under suspension excludes such carriers from participating in the transportation under consideration and creates a monopoly in favor of a competitor, which is unlawful, *Menacho v. Ward*, 27 Fed. 529, *Eden Mining Co. v. Bluefields Fruit & S. S. Co.*, 1 U. S. S. B. 41. 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.

Furthermore it will have been observed that if the shipper violates the contract it shall be liable to respondent for payment of additional freight on all quantities theretofore shipped since the execution of the contract in the amount of the difference between the proposed rate "and the 'B' line rate named in R. C. Thackara's Westbound Freight Tariff 1-B, SB-I No. 4, supplements or reissues thereof, Item 3102-A, at the time of such shipments." The so-called "B" line rates contained in Agent Thackara's tariff, to which respondent is a party, were adopted and published as the result of an agreement which no longer exists. Should other "B" lines, as respondent is now attempting to do, change their rate on silica sand from Baltimore to the destinations involved, it would be confusing, if not impossible, to state the rate upon basis of which the shipper would have to make restitution to respondent.

The department finds that the suspended schedule has not been justified. Rates based on a minimum weight so high as to be available only to one shipper have been found to violate section 16 of the Shipping Act, 1916, *Intercoastal Rates of Amer.-Hawaiian S. S. Co. et al.*, 1 U. S. S. B. 349. However, the record does not disclose there are shippers, other than the shipper hereinbefore referred to, making intercoastal shipments of silica sand for manufacture of glass and glassware to points on the Pacific Coast; or that 500 net tons is too high a minimum on such commodity, and this finding is without prejudice to the filing of a new schedule naming the proposed rate in such manner as to make its application free from execution of contracts with shippers.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 170

PROPORTIONAL WESTBOUND INTERCOASTAL RATES ON CAST-IRON
PIPE

Submitted March 22, 1935. Decided May 9, 1935

Proposed proportional rates on cast-iron soil and pressure pipe from Charleston, S. C., and Savannah, Ga., to Pacific coast ports found justified.

F. W. S. Locke and George C. Stern for Nelson Steamship Company.

Walter Smith for Strachan Shipping Company.

J. A. Von Dohlen for J. A. Von Dohlen Steamship Company.

Elisha Hanson for Swayne & Hoyt, Ltd. (Gulf Pacific Line) and Luckenbach Gulf Steamship Company, Inc.

W. P. Rudrow for Arrow Line.

Oliver P. Caldwell for Luckenbach Steamship Company, Inc., and Luckenbach Gulf Steamship Company, Inc.

J. D. Patterson for Savannah Traffic Bureau and Savannah Chamber of Commerce.

S. P. Gaillard, Jr., for Alabama State Docks Commission, Mobile Chamber of Commerce, Pensacola Chamber of Commerce, and Gulf, Mobile & Northern Railroad.

W. N. Pendleton for Waterman Steamship Corporation.

H. H. Simms for Atlanta & St. Andrews Bay Railway Company.

J. A. Bywater for Louisville & Nashville Railroad.

Rene A. Stiegler for Board of Commissioners of the Port of New Orleans.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective January 15, 1935, Nelson Steamship Company, through its Agent R. C. Thackara, proposed to establish proportional rates on cast-iron soil and pressure pipe

from Charleston, S. C., and Savannah, Ga., to Pacific coast ports, applicable on shipments originating at Birmingham, Ala., and other designated inland points in the Birmingham District. Upon protests of the Mobile Chamber of Commerce, Alabama State Docks Commission, the Board of Commissioners of the port of New Orleans, Gulf Pacific Line, and Luckenbach Gulf Steamship Company, Inc., the operation of the proposed schedules was suspended by the Department until May 15, 1935.

At the hearing various interests intervened, some not offering any testimony, others testifying for or against the proposed schedules.

The proposed proportional rates were established to meet competition via the port of Mobile. Using pipe not exceeding 20 feet in length and not exceeding 12 inches in diameter, for purposes of illustration, local and proposed proportional carload rates in cents per ton of 2,000 pounds from Charleston and Savannah to Pacific coast ports and rates from Mobile and New Orleans to Pacific coast ports are shown below:

	From Charleston and Savannah		From Mobile and New Orleans	
	Local	Proposed proportional	Noncontract	Contract
CAST IRON PRESSURE PIPE				
Other than owner's risk.....	810	596	859	659
Owner's risk.....	670	452	715	515
CAST IRON SOIL PIPE				
Other than owner's risk.....	760	697	760	-----
Owner's risk.....	620	557	620	-----

An exhibit of record shows that the rail carload rates from Birmingham on cast iron soil and pressure pipe are to Mobile \$2.45, to Charleston and Savannah \$3.08 and to New Orleans \$2.95 per ton of 2,000 pounds. It will be noted that the rail rate from Birmingham to Charleston or Savannah, plus the proposed proportional rates beyond in each instance equals the rail rate from Birmingham to Mobile, plus the lowest available port-to-port rate, contract or noncontract, from Mobile to Pacific coast ports.

Protestants contend that the proportional rates are intended to equalize total transportation charges via Mobile, and that port equalization rules were condemned by the Department in its decision in *Intercoastal Rates of Nelson S. S. Co.*, 1 U. S. S. B. B. 326. Respondent admits that the proportional rates are intended to meet the rates via Mobile, but contends that they are specific rates and therefore do not violate the principle announced in the case cited. Respondent also calls attention to the fact that rule 3 (c) of Tariff Circular No. 2 au-

thorizes the publication of proportional rates, and cites numerous proportional rates to intercoastal destinations, applicable via the Mississippi Valley Barge Line to New Orleans and Gulf intercoastal carriers beyond, and from Atlantic coast ports to the same destinations applicable via respondent and other intercoastal carriers, all of which are lower than the rates on the same commodities applicable on local port-to-port traffic. Respondent also shows that Gulf intercoastal lines maintain a joint proportional rate of \$1 per 100 pounds on second-hand cash registers from Los Angeles, Calif., and other Pacific coast ports to Cincinnati, Ohio, in connection with the Mississippi Valley Barge Line beyond New Orleans applicable on shipments destined beyond Cincinnati, while contemporaneously maintaining a local carload rate of \$1.135 to New Orleans.

The Department heretofore has not formally considered the question of whether the publication of proportional rates lower than the rates applicable on shipments originating at or destined to the same ports is proper or lawful. The fact, however, that the tariff rules of the Department specifically permit the publication of proportional rates supports respondent's view that the publication of such rates is permissible. But this in no way relieves respondent from the mandate of the law that its rates for transportation must not be violative of the Shipping Acts.

The two intercoastal lines which provide weekly sailings from Mobile to the Pacific coast object to the proposed rates on the ground that the service which they have built up will be undermined; that they will be deprived of a traffic from inland origin territory to which by geographic position they are naturally entitled; and that approval of the proposed rates will open the way for the gradual inroad by all carriers into those territories from which they now draw their traffic. Since the approximate distance from Birmingham to Mobile is 275 miles, whereas the approximate distance from Birmingham to Charleston is 475 miles, the port of Mobile and the Alabama State Docks Commission contend that they will be deprived of those natural advantages which result from the proximity of Mobile to the Birmingham area.

A representative of the largest manufacturer of cast iron pressure pipe in the Birmingham area testified that it is essential to his business that there be a regular and dependable service at a stable rate, and that the Gulf lines do furnish such service at the present time. The railroads afford an overnight delivery from Birmingham to Mobile, whereas there is a fourth morning delivery from Birmingham to Charleston or Savannah. This witness feared that the present satisfactory service of the lines out of Mobile would be curtailed by the diversion of traffic to Charleston or Savannah, and

that such curtailment would result in the industries of Alabama being called upon to pay higher taxes because of the fact that the docks at Mobile are owned by the State. The interest of shippers in the welfare of the public docks at Mobile, while commendable, has no bearing on the lawfulness of the proposed rates from Charleston and Savannah. With respect to the protest of the port of New Orleans, it seems sufficient to state that the present through charges via New Orleans are 50 cents per ton of 2,000 pounds higher than charges via Mobile and that any injury which may result to New Orleans from the establishment of the same through charges via Charleston or Savannah as now apply through Mobile is purely speculative.

Protestants submitted no facts whatsoever to support their contention that the establishment of the proposed rates would lessen the service or sailings from Mobile, nor does the record support a finding that the proposed rates in any way violate any provision of the Shipping Act, 1916. An appropriate order vacating the suspension and discontinuing the proceeding will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 96¹

IN RE ASSEMBLING AND DISTRIBUTING CHARGE

Submitted December 12, 1934. Decided May 13, 1935

Collection of separate charge for assembling and distributing inter-coastal general cargo at Los Angeles and Long Beach, Calif., found unjust, unreasonable, unduly and unreasonably preferential and prejudicial. Approval of agreement to establish and maintain such charge withdrawn.

H. R. Kelly and J. A. Olson for respondents.

Emuel J. Forman, T. A. L. Loretz, F. W. Turcotte, and John J. Seid for Los Angeles Traffic Managers Conference; *H. R. Brashear* for Los Angeles Chamber of Commerce; *James F. Collins, C. E. Barry and Charles A. Bland* for Board of Harbor Commissioners of the City of Long Beach; *Karl D. Loos, L. A. Strause, and R. C. Neill* for California Citrus League; *R. S. Sawyer* for Associated Jobbers & Manufacturers; *F. W. Turcotte and B. H. Carmichael* for Asbury Transportation Company and Belyea Truck Company; *L. H. Stewart* for American Cotton Cooperative Association and T. J. West Company, Limited; *C. F. Reynolds* for San Diego Chamber of Commerce and San Diego Harbor Commission; *Clyde M. Leach and Harrison Cassell* for Board of Harbor Commissioners of the City of Los Angeles; *J. J. Seid* for Zellerbach Paper Company, Western Waxed Paper Company, and Crown Zellerbach Corporation; *John G. Beaver* for California Milling Corporation, Los Angeles Chemical Company, and Charles R. Hadley Company.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

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

¹ This report embraces No. 98, In Re Assembling and Distributing Charge—Foreign and Offshore Commerce.

On February 1, 1933, the United States Shipping Board approved an agreement for the establishment and maintenance of an assembling charge upon all intercoastal "general cargo" loaded into, and a distributing charge on all intercoastal "general cargo" discharged from, vessels owned, operated, represented, or controlled by respondents² at the ports of Los Angeles and Long Beach, Calif., except bulk cargo handled directly between ship and cars placed on the "high line", the name given railroad tracks so located on a wharf as to enable the placing of cars alongside the ship. This agreement was given Bureau of Regulation and Traffic No. 2224. On February 10, 1933, effective March 10, 1933, as a result of this agreement the following tariff was published by the Los Angeles Steamship Association, in which all respondents hold membership:

LOS ANGELES STEAMSHIP ASSOCIATION TERMINAL TARIFF

No. 2-AD

ASSEMBLING AND DISTRIBUTING CHARGE APPLYING AT LOS ANGELES AND LONG BEACH,
CALIF., ON INTERCOASTAL COMMERCE

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

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

This tariff was not filed with the Shipping Board pursuant to Section 18 of the Shipping Act. Filings made pursuant to that section and the Intercoastal Shipping Act, 1933, will be dealt with later in this report.

Upon petition of Los Angeles Traffic Managers Conference, an association of freight traffic managers representing industrial and manufacturing concerns of Los Angeles and vicinity, this investigation was instituted for the purpose of determining the lawfulness of the thirty-cent charge put into effect March 10, 1933, on intercoastal traffic, and whether the approval given to Agreement No. 2224 should be withdrawn.

² American Line Steamship Corporation (Panama Pacific Line), Isthmian Steamship Company, Argonaut Steamship Line, Inc., Nelson Steamship Company, Pacific-Atlantic Steamship Company (Quaker Line), Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., Panama Mail Steamship Company (Grace Line), Dollar Steamship Lines, Inc., Ltd., McCormick Steamship Company, American-Hawaiian Steamship Company, Williams Steamship Corporation, Swayne and Hoyt, Ltd. (Gulf Pacific Line), Shepard Steamship Company, Sudden & Christenson and Los Angeles Steamship Company (Arrow Line), and Calmar Steamship Corporation.

Docket No. 98 is an investigation predicated upon petition of Los Angeles Traffic Managers Conference, attacking an alleged assembling and distributing charge of American & Manchurian Line and others at Los Angeles and Long Beach on foreign and offshore commerce. No evidence was presented and an order will be entered discontinuing the proceeding.

Most of the general cargo wharves at Los Angeles were constructed and are owned by the city, and are operated by the Los Angeles Board of Harbor Commissioners. On October 3, 1932, the Board of Harbor Commissioners increased the dockage charges against ships and the charges for use of space on the wharves not devoted exclusively to the handling and moving of cargo, such as office space and rest rooms. The Board of Harbor Commissioners customarily assigns wharves either under preferential assignments, secondary assignments or temporary assignments. Prior to October 3, 1932, no charge was made in connection with these assignments for the use of space devoted exclusively to the handling and movement of cargo. On that date, however, for all preferentially assigned space the Board of Harbor Commissioners put into effect charges of one-half cent per square foot per month for shedded wharves "including apron wharf and rear loading platform the length of the shed"; and one-quarter cent per square foot per month for "second story floors in transit sheds or outside areas at ends of sheds", and one-quarter cent per square foot per month for open wharves. On the same date another new charge known as a cargo handling permit fee of one-half cent per ton of cargo, minimum \$25.00 per month or fraction thereof, was made to be paid on all cargo handled between ship's tackle and pile on dock. The stevedoring companies ordinarily perform such handling for the carriers and this fee would ultimately be paid by the carriers. Respondents claim, however, that their preferential assignments of space include the right to assemble and distribute cargo on the wharf and have refused to pay this charge.

The volume of intercoastal traffic declined sharply at Los Angeles during the period between July 1929 and June 1932. During that period there also was a drift of cargo from rail to truck adversely affecting the revenue obtained by respondents from loading and unloading railroad cars. These facts and the new and increased charges by the Board of Harbor Commissioners are stated by respondents to be largely responsible for their establishment of the "assembling and distributing charge" under attack.

Long Beach Harbor is east of and adjacent to Los Angeles Harbor, with which it is connected by Cerritos Channel. Terminals at Long Beach are not preferentially assigned and there is no shed rental. The only charge against respondents is for dockage, at rates similar to

those in effect at Los Angeles Harbor prior to October 3, 1932. The tariff of the Board of Harbor Commissioners of Long Beach has not been changed since its issuance in 1925. The "assembling and distributing charge" was made applicable at Long Beach by respondents in order to establish uniform practices at both ports.

In unloading vessels, sling loads of cargo are lowered to trucks on the wharf at ship's side provided by the stevedore, who then removes the cargo to the sheds or other place of rest, where it is set up in piles. In a sling load of general cargo there are likely to be a number of different commodities for various consignees, and even for a number of different ultimate destinations, which necessitates a certain amount of sorting. Similarly, in loading a vessel the carriers frequently assemble in a single sling load cargo delivered to the wharf by several shippers. Respondents insist that their transportation rates are for service from and to ship's side only, but the record is clear that they refuse either to accept cargo for transportation or to make delivery to the consignee at such point. As stated by a witness for respondents "an attempt to deliver general merchandise to these consignees at ship's side from the various hatches as fast as unhooked from the tackle or to reverse the operation in loading would be physically impossible in the space available. It would neither be in the interest of the cargo owner or the shipowner because it would create an example of inefficiency that would be nothing short of a spectacle." Ship's side delivery to motor trucks "would run up the cost to not only the vessel owner but the receiver of merchandise and would delay the receipt of merchandise if an attempt was made to deliver all of it to trucks at the high line." While the carriers argue that the movement between ship's tackle and pile on dock, including any necessary sorting or assembling, "obviously involves additional services and costs", the record here is that the stevedore is paid by the carriers a single amount for his various services, including the sorting, assembling, and handling service in question, and although respondents attempted to allocate the cost of this service, not only do the stevedoring contracts of record fail to provide for any lower charge to the respondents in the event cargo should be delivered at ship's side, but the carriers admit that the method of receipt and delivery actually employed by them is less expensive, more efficient, and causes less delay. Stevedoring charges are shown to have been reduced in December 1932.

At Portland, Seattle, and Tacoma, cargo is handled between ship's tackle and pile on dock by agencies separate from the steamship companies, but the charge for this service is absorbed by the intercoastal carriers. At San Francisco, as at Los Angeles and Long Beach, the stevedores perform this service as a part of their stevedoring contracts with the carriers. Rates for intercoastal transportation are

the same between Atlantic ports and Los Angeles, Long Beach, San Francisco, Portland, Seattle, and Tacoma, and the same form of bill of lading is used for consignments to and from Los Angeles and Long Beach as is used by each carrier for consignments to and from the other ports. According to respondents the transportation rate does not contemplate delivery at point of rest on the wharf beyond ship's tackle, but in the case of San Francisco the carriers feel justified in not assessing a charge for the movement between ship's tackle and point of rest due to alleged lower costs to them at that port. No specific reason is given by respondents for the absorption at Portland, Seattle, and Tacoma of the charge for handling cargo between ship's tackle and point of rest.

The carrier's undertaking is not only to transport but also to deliver cargo to consignees because transportation, as the United States Supreme Court often has said, is not completed until the shipment arrives at the point of destination and is there delivered. *Danciger v. Cooley*, 248 U. S. 319; *Rhodes v. Iowa*, 170 U. S. 412, 415, 420; *Vance v. Vandercook Co.*, 170 U. S. 438, 451; *Louisville & Nashville R. R. Co. v. Cook Brewing Co.*, 223 U. S. 70, 82; *Kirmeyer v. Kansas*, 236 U. S. 568, 572; *Rosenberger v. Pacific Express Co.*, 241 U. S. 48, 50. Although respondents admit it is their obligation to make proper delivery of the cargo, they urge that delivery beyond ship's side is a separate operation, the cost of which should be borne by the cargo. This view conflicts with that of the United States Supreme Court as expressed in *Brittan v. Barnaby*, 62 U. S. 527, 533, 535:

The word freight, when not used in a sense to imply the burden or loading of the ship, or the cargo which she has on board, is the hire agreed upon between the owner or master for the carriage of goods from one port or place to another. That hire, without a different stipulation by the parties, is only payable when the merchandise is in readiness to be delivered to the person having the right to receive it. Then the freight must be paid before an actual delivery can be called for. In other words, the rule is, in the absence of any agreement to the contrary of it, that freight, under an ordinary bill of lading, is only demandable by the owner, master, or consignee of the ship, when they are ready to deliver the goods in the like good order as they were when they were received on board of the ship. * * * The general rule is, that the delivery of the goods at the place of destination, according to the bill of lading, is necessary to entitle the ship to freight. The conveyance and delivery is a condition precedent, and must be fulfilled (§ Kent 218).

What constitutes valid delivery is well settled by decisions of the courts. It is necessary to show that the goods were landed on the wharf, that the different consignments were properly separated from the general mass of cargo discharged so as to be open to inspection and so placed as to be conveniently accessible to their respective owners, that notice was given of their arrival and a reasonable time allowed for their removal. If, after being so discharged and separated,

the goods are not accepted by the consignee, the carrier should not leave them exposed on the wharf but should store them in a place of safety and so notify the consignee, whereupon the carrier is no longer liable on his contract of affreightment, *Southern Pacific Co. v. Van Hoosear*, 72 Fed. (2d) 903; *Clifford v. Merritt-Chapman & Scott Corporation*, 57 Fed. (2d) 1021; "The Eddy", 72 U. S. 481; "The *Titania*", 131 Fed. 229. A mere discharge of cargo is not delivery and until the goods are so placed and tendered for delivery it is impossible for the consignees to receive and remove them. The service for which the assembling and distributing charge under consideration applies is necessary to effect orderly and expeditious delivery. It promotes the despatch of vessels, minimizes congestion and confusion at ship's side and thus aids in the handling of a larger volume of cargo than could be adequately and economically handled at ship's side. If the shipper pays for delivery at ship's tackle and does not receive it but instead is obliged by the steamship companies to take delivery from place of rest on dock, which delivery costs the carriers not more but less, he may not be compelled to pay an additional charge upon the assumption that he has received an additional service. The United States Supreme Court has held that a carrier may not charge the shipper for the use of its general freight depot in merely delivering his goods for shipment nor charge the consignee of such goods for its use in merely receiving them there within a reasonable time after they are unloaded. It is not within the power of the carriers by agreement in any form to burden shippers with charges for services they are bound to render without any other compensation than the customary charges for transportation. *Covington Stock Yards Co. v. Keith*, 139 U. S. 128, 135, 136.

Respondents contend that the inauguration of the assembling and distributing charge was merely the equivalent of increasing their transportation rates to offset their own increased expenses. This theory is negatived by the fact that this charge has not been assessed on cargo received or delivered at the "high line", although the increased expenses of the carriers referred to were not such as to justify any such differentiation between "high line" and other cargo. Moreover, the assembling and distributing charge actually assessed has yielded revenue greatly in excess of the total increase in expenses relied upon. Figures of record show that increased payments made by the carriers by reason of these increased expenses amounted to approximately \$82,162 for the ten-month period October 1932 through July 1933, whereas figures also submitted by respondents disclose that collections of the assembling and distributing charge on intercoastal traffic amounted to approximately \$86,967 in the five-month period March-July 1933.

No cogent reason was advanced by respondents for the inauguration of an assembling and distributing charge at Long Beach, where port charges paid by the carriers have remained stable since 1925. For the reasons set forth above, the increase in port expenses incurred by the carriers at Los Angeles does not justify the establishment of a separate charge for service necessary to complete transportation. The assembling and distributing charge is therefore found to be unjust and unreasonable in violation of Section 18 of the Shipping Act, 1916.

On behalf of petitioners, witnesses testified to competition existing between receivers of intercoastal cargo at Los Angeles and Long Beach and receivers of intercoastal cargo at San Francisco. In illustration, one corporation whose plant is within the switching limits of Los Angeles, engaged in the fabrication of structural steel for buildings, bridges, and tanks and in manufacturing boilers and various classes of machinery, is in direct competition with fabricators and manufacturers in the San Francisco Bay territory, particularly at points intermediate between Los Angeles and San Francisco. Practically all of its intercoastal business is the movement from the Atlantic coast of unfabricated steel plates, shapes, bars, beams, channels, angles, and a number of miscellaneous commodities to the ports of Los Angeles and Long Beach. The 30-cent assembling and distributing charge assessed against its inbound shipments has to be absorbed by it before it can market its products in such competitive territory because of the fact that no such charge is collected at San Francisco, to which port the intercoastal rates are the same as to Los Angeles.

On behalf of petitioners, witnesses also testified to competition on eastbound intercoastal shipments between shippers at San Francisco and shippers at Los Angeles. For example, fish canners at Los Angeles compete with canners at Monterey, Calif., who forward their products through San Francisco. The same prices are customarily quoted f. o. b. steamer at Los Angeles as are quoted f. o. b. steamer at San Francisco, and the shipper from Los Angeles absorbs the 30-cent assembling and distributing charge which its competitor does not have to meet at San Francisco.

In defense of their position that these and other similar instances of record do not constitute unlawful preference and prejudice, respondents have cited the decision of the United States Supreme Court in *United States v. Illinois Central R. R.*, 263 U. S. 515, wherein the court said:

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

a difference in rates within the prohibition of Section 3,¹ it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal, unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions.

The record shows that notwithstanding the distance between Atlantic coast points and San Francisco is substantially greater than that between those points and Los Angeles, San Francisco enjoys the same intercoastal transportation rates as Los Angeles. There is no showing that the carriers incur any expense at Los Angeles or Long Beach not incurred by them at San Francisco. The same wages are paid stevedores at all three ports. A number of the stevedoring contracts submitted in evidence cover San Francisco as well as Los Angeles and Long Beach operations, and show that the rates charged the carriers by the contracting stevedoring companies are the same at each of the three ports. Therefore the imposition of the 30-cent charge at Los Angeles which is not imposed at San Francisco, measured by the transportation standards as referred to in the *Illinois Central Railroad* cited, falls squarely within the type of preference and prejudice which Section 16 of the Shipping Act condemns.

The assessment by respondents of the assembling and distributing charge at Los Angeles and Long Beach is found to give undue and unreasonable preference and advantage to San Francisco and to shippers and receivers of intercoastal cargo through that port and subjects 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 Section 16 of the statute.

The second paragraph of Section 15 of the Shipping Act, 1916, provides for the disapproval, cancellation, or modification of any agreement, whether or not previously approved, that is found to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or to be in violation of that act. Paragraph 3 thereof provides that it shall be unlawful to carry out any agreement or any portion thereof so disapproved. For the reasons stated herein, the approval of agreement of respondents for the establishment and maintenance of the assembling and distributing charge under consideration will be withdrawn.

Section 18 of the Shipping Act, 1916, the tariff-filing provisions of which applied to intercoastal carriers at the time this proceeding was instituted, requires the filing of maximum interstate rates, fares, and charges within the time prescribed by the board, and the tariff regulations, as amended, prescribe that time as not later than the day

¹ Of the Act to regulate commerce, which declares unlawful with respect to transportation by rail "any undue or unreasonable preference or advantage" or "any undue or unreasonable prejudice or disadvantage."

on which the transportation to which such maximum rates, fares, and charges relate is begun. On March 6, 1933, the Los Angeles Steamship Association filed with the 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 the 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 and the tariff regulations. On April 3, 1933, 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, S. B. No. 1, effective that date, was filed on behalf of all respondents except Calmar Steamship Corporation, whose separate Maximum Terminal Tariff No. 1, S. B. 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. This carrier first collected an assembling and distributing charge on cargo discharged at Los Angeles from a vessel arriving there on March 31, 1933. Respondents other than Calmar Steamship Corporation collected the assembling and distributing charge between March 10, 1933, and April 3, 1933, without any tariff authority, in violation of law.

The Intercoastal Shipping Act, 1933, was approved March 3, 1933. Section 2 thereof provides in part as follows:

From and after ninety days following enactment hereof no person shall engage in transportation as a common carrier by water in intercoastal commerce unless and until its schedules as provided by this section have been duly and properly filed and posted; nor shall any common carrier by water in intercoastal commerce 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 board and duly posted and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such schedules.

Eastbound and westbound tariffs of Calmar Steamship Corporation, effective June 1, 1933, filed pursuant to this section, named an assembling and distributing charge of 30 cents per ton applicable only at Los Angeles Harbor. Those of American Line Steamship Corporation (Panama Pacific Line), Isthmian Steamship Company, Argonaut Steamship Line, Inc., Nelson Steamship Company, Pacific-Atlantic Steamship Company (Quaker Line), Luckenbach Steamship Company, Inc., Panama Mail Steamship Company

(Grace Line), Dollar Steamship Lines, Inc., Ltd., McCormick Steamship Company, American-Hawaiian Steamship Company, Williams Steamship Corporation and Sudden & Christenson and Los Angeles Steamship Company (Arrow Line), issued by Agent Thackara, were supplemented by naming an assembling and distributing charge of 30 cents per ton applicable at Los Angeles Harbor, effective June 29, 1933. A like charge applicable at Long Beach on westbound traffic was contained in a supplement to tariffs of the last-mentioned carriers effective July 26, 1933. No tariffs of these carriers filed with the Department pursuant to Section 2 of the Intercoastal Shipping Act, 1933, except those of Calmar Steamship Corporation, name eastbound intercoastal rates from Long Beach. Eastbound tariffs of Swayne & Hoyt, Ltd. (Gulf Pacific Line) and Luckenbach Gulf Steamship Company, Inc., issued by Agent J. P. Williams, were supplemented by naming the charge involved at Los Angeles Harbor effective July 20, 1933. Westbound tariffs of these two carriers, issued by Agent C. Y. Roberts, were similarly supplemented, effective August 1, 1933. Neither the eastbound nor westbound tariffs of these latter carriers name rates from or to Long Beach. Tariffs of Shepard Steamship Company do not name an assembling and distributing charge at Los Angeles Harbor or Long Beach. Its eastbound rates do not apply from Long Beach. All collections of the assembling and distributing charge at Los Angeles Harbor and Long Beach during the periods in which tariffs on file with the Department failed to name such charge are in violation of Section 2 of the Intercoastal Shipping Act, 1933.

Appropriate orders will be entered discontinuing the proceeding in Docket No. 98, withdrawing approval of Agreement No. 2224, and ordering respondents in Docket No. 96 to cancel the assembling and distributing charge on intercoastal cargo at Los Angeles and Long Beach. Such cancellations may be made by tariff publications filed on not less than one day's notice by noting thereon reference to this decision.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 147

WESSEL, DUVAL & CO., INC.
v.
COLOMBIAN STEAMSHIP CO., INC., ET AL.

Submitted March 8, 1935. Decided June 7, 1935

Atlantic and Gulf/West Coast of South America Conference Agreement not shown to be unlawful; and an order by the Department requiring respondents to admit complainant to membership in the conference with a rate differential found not justified. Complaint dismissed.

Wood, Molloy & France for complainant.

William F. Cogswell for Grace Line, Inc., and Panama Mail Steamship Co.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions were filed by complainant to the report proposed by the examiner, and respondents replied.

Complainant, a corporation, organized on January 1, 1932, under the Laws of the State of New York, is successor to the partnership of Wessel, Duval & Company which had for a number of years operated ships in the trade routes between New York, N. Y., and ports on the west coast of South America, under the trade name West Coast Line. Respondents are common carriers by water and comprise the membership (with the exception of the Panama Railroad Steamship Line, which was not named as a party respondent in this proceeding) of the Atlantic and Gulf/West Coast of South America Conference, a voluntary association to promote southbound commerce from Atlantic and/or Gulf ports of the United States to ports on the west coast of South America, either for direct movement or for transshipment via Cristobal and/or Balboa, Canal Zone, under U. S. Shipping Board Bureau Agreement No. 2744, approved March 9, 1934, and addenda thereto.

Complainant's predecessor was a member of a former conference¹ covering the trade here involved, although it made only four sailings in 1930 and none in 1931, and the complainant corporation continued as a member of that conference although it operated only one ship in the trade during 1932 and none in 1933. Complainant was asked to resign from that conference, and upon its refusal to do so the other members who are respondents in this proceeding resigned and thereafter formed the present conference.

Section 8 of the existing conference agreement provides that—

Any other common carrier by water engaged in the transportation of cargo in the southbound trade from Atlantic and/or Gulf ports of the United States of America to West Coast ports of Colombia, Ecuador, Peru, and Chile, either for direct movement or for transshipment at Cristobal and/or Balboa, Canal Zone, who shall be willing to be bound by this agreement may apply for membership. Applicants * * * may be admitted by a majority vote of all the members present at a subsequent regular or special meeting * * * provided, however, no such applicant shall be denied admission except for just and reasonable cause.

By letter dated May 1, 1934, complainant advised the conference secretary that it intended to reestablish the service to west coast ports of South America theretofore maintained by the West Coast Line, and asked for admission to membership in the conference, agreeing to the terms and conditions thereof with the understanding, however, that its freight steamers would be given a freight differential of ten (10) percent as against shipments by passenger vessels. In that letter complainant stated its intention to have at least four sailings during the remainder of the year, commencing in late May or early June. This application for membership in the conference with allowance of differential rates was denied by letter to complainant dated May 21, 1934, on the ground that the organic agreement does not provide "for any preferential treatment or discrimination in relation to any member lines."

Complainant alleges, in substance, that the conference agreement here involved is unlawful because it gives a monopoly to respondent Grace Line, Inc., which is the only conference line maintaining a direct service between the ports which the conference assumes to cover; that respondents have unlawfully refused to admit the complainant to the conference with allowance of differential rates for its slow cargo vessels, and that unless complainant is admitted to said conference and allowed a rate differential, it will be barred and prevented from reinstating and carrying on the former West Coast Line service, because shippers signing the conference freight agree-

¹ U. S. Atlantic and Gulf/West Coast of Mexico, Central and South America Conference Agreement, Bureau of Regulation Conference Agreement No. 121, approved February 5, 1929; canceled March 9, 1934, upon approval of Agreement No. 2744.

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ment will lose the advantages conferred thereby if they ship by complainant's line. Complainant asks that the said conference agreement be cancelled or, in the alternative, that it be modified by the inclusion therein of a provision for a rate differential in favor of slow cargo vessels maintaining direct service to ports covered by said agreement, and that the respondents be directed to admit the complainant to membership in the conference under such amended agreement.

In the conference agreement as approved March 9, 1934, there was no provision for differential rates, but members were advised by the Department that the approval of the agreement without a provision for a rate differential in favor of slow cargo vessels maintaining direct service to ports covered by the agreement was without prejudice to any action the Department might take in the event a carrier operating such a service should seek admission to the conference. By a modification approved October 1, 1934, the Panama Railroad Steamship Line was added to the conference membership as a transshipment line and a provision was inserted in the agreement that rates on cargo transshipped at the Canal Zone would be ten (10) percent less than those for direct shipment. The record indicates that this action of the conference was due to competition between the Panama Railroad Steamship Line and the other transshipment lines.

Under the prior conference agreement, participated in by the complainant and most of the respondents in this proceeding, a rate differential of ten (10) percent was allowed in favor of vessels operated by complainant and certain other lines in the conference. The record shows that this differential was agreed to by the conference to avoid a rate war and to preserve stability in the trade. It is also shown that the Brazil River Plate and Havana Steamship conferences allow a differential as between cargo vessels and passenger vessels. The facts and circumstances under which these particular differentials came into existence are not shown, but, in any event, the establishment of a system of differential rates by voluntary action of these groups of steamship lines does not create a precedent insofar as the initiation of such a system by government decree is concerned. Furthermore, the establishment by the conference here involved of different rates for the transshipment lines does not necessarily require the establishment of the same or any differential as between vessels affording direct service.

At the time complainant applied for admission to the conference there was no evidence that it was operating a regular service in the trade. There had been two sailings, one in February and one in April of 1934, with vessels placed on the berth by complainant as

agent, but complainant says they were limited to two or three ports and that the service was not actually inaugurated until June 1934. The sailings offered as evidence of the reinstatement of the former West Coast Line service were as follows:

Vessel:	Sailing date
<i>Nyhaug</i> -----	June 18, 1934.
<i>Stella</i> -----	July 7, 1934.
<i>Nordhval</i> -----	July 28, 1934.
<i>Stella</i> -----	Sept. 10, 1934.
<i>Nordlys</i> -----	Sept. 27, 1934.
<i>Paula</i> -----	Oct. 15, 1934.

The above-mentioned vessels were all foreign owned and under foreign flag. The *Nyhaug*, *Nordhval*, and *Nordlys* were under time form of charter to complainant for one voyage, and the *Stella* and *Paula* were placed on berth by complainant as agent for J. Lauritzen, the Danish owner. Under the agency agreement, the owner pays the operating expenses and the complainant, as agent for the southbound voyage, arranges the berths, fixes the rates, books the cargo and accounts to the owner for the freight revenue. This agency agreement is terminable at the option of the owner, so that complainant has no assurance of being able to furnish any future service with vessels from this source.

Complainant does not own any vessels but its witness testified at the hearing that it had four foreign flag vessels under time form of charter for one voyage each and that it expected to furnish at least one sailing a month with these or other vessels under similar form of charter, supplemented from time to time by vessels placed on berth as agent. Complainant has not shown that it is equipped to furnish any service in this trade beyond the four sailings which it expected to provide with the four vessels under time form of charter for one voyage each as noted above.

In support of its demand for a ten (10) percent differential in rates, complainant shows that: At the Panama Canal passenger vessels have preference over cargo vessels, irrespective of the time of arrival, "under certain circumstances"; at all the ports along the west coast of South America passenger vessels are received by the authorities in preference to freight vessels and passenger vessels also have preference in the assignment of lighters to discharge cargo; and the insurance rate for regular passenger vessels is from twenty to forty percent lower than the rate for freighters. Granting that such handicaps might reasonably influence or compel the operator of cargo vessels to maintain rates lower than those of other lines operating faster passenger vessels in order to successfully compete with such other lines, complainant has not demonstrated that ten (10) percent would be a proper differential in any case, and no legal

basis has been established to support a finding by this Department that any vessels operated or to be operated by complainant are entitled to a ten (10) percent differential or, in fact, any differential.

Complainant bases its demand for differential rates, in part, on the difference in time of transit between the slow cargo vessel and the faster passenger vessel, and offers as supporting evidence the record of four southbound voyages completed during the year 1934. Valparaiso, Chile, was a port of call for all four sailings but the intermediate ports of call were varied. The elapsed time to common ports of call was different in practically every instance and no proper basis for fixing differential rates could be established by comparison with the elapsed time of passenger vessels operated on a regular schedule. Furthermore, there is no assurance that the same vessels will be used by complainant in the contemplated service. The elapsed time of the vessels used will vary according to the speed of the vessels operated, the number of ports of call and the time spent at each port. Beyond the four voyages for which complainant had vessels under time charter, it is not known what vessels complainant will use and the vessel speed is, therefore, an unknown factor. The other factors mentioned will be subject to change in accordance with the requirements of each particular voyage.

Respondent Grace Line, Inc., is the only conference line furnishing a direct through service to ports on the west coast of South America, but the other six conference lines furnish frequent and regular service from Atlantic and Gulf ports with transshipment at the Panama Canal under through-route and joint-rate arrangements with lines serving the west coast of South America. During the year 1933 and the first six months of 1934 these transshipment lines carried 65,148 tons of cargo destined to ports on the west coast of South America, which represented 30.66 percent of the entire movement by all conference lines during that period. The conference agreement has since been amended to allow the transshipment lines a rate differential, and under the provisions of the conference contract shippers have the option of selecting the vessels of any carrier which at time of shipment is a member of the conference. It is not apparent that the conference agreement confers a monopoly on respondent Grace Line, Inc.

The Department finds that the Atlantic and Gulf/West Coast of South America conference agreement of respondents is not shown to be unlawful; and that an order by the Department requiring respondents to admit complainant to membership in the conference with a rate differential is not justified. An order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 153

EDMOND WEIL, INC.

v.

ITALIAN LINE, "ITALIA" (FLOTTE RIUNITE COSULICH, LLOYD
SABAUDO, NAVIGAZIONE GENERALE)

Submitted April 12, 1935. Decided June 8, 1935

Respondent's eastbound rate on goatskins not shown to be violative of sections 14, 14a, 15, 16, 17, or 18 of the Shipping Act, 1916, as alleged. Complaint dismissed.

Charles A. Weil for complainant.

William J. Dean for respondent.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions were filed by complainant to the examiner's proposed report.

Complainant, a corporation, is engaged at New York City in importing and exporting hides and skins. Respondent is a common carrier engaged in transportation by water between New York and Italy.

On a returned shipment of five bales of dry goatskins moving August 18, 1934, on respondent's vessel *Rex* from New York to Naples, Italy, freight charges of \$70.35, at the rate of 41¢ per cubic foot, were prepaid by complainant, although on the same shipment arriving at New York on respondent's vessel *Conte di Savoia* on July 4, 1934, from Naples, freight charges of \$39.44 had been prepaid at the alleged rate of \$21.75 per 1,000 kilos. Complainant alleges that by collecting a rate for the eastbound transportation of a re-

turned shipment which is higher than that for the original west-bound transportation, "respondent unjustly and arbitrarily discriminates against complainant, shippers, exporters, importers, the goatskin trade, and the port of New York; violates provisions of law relative to unfair practice; is unjustly discriminatory and/or unfair to complainant as between shippers, exporters, importers, and/or between exporters from the United States and their foreign competitors, operating to the detriment of the commerce of the United States; gives undue and unreasonable preferences to the undue and unreasonable prejudice or disadvantage of complainant, the goatskin trade, the port of New York, and exporters in general of the United States, and violates custom and usage which have the force of law; illegally restrains trade; and further alleges that the rate complained of is unjust and unreasonable and in other respects violates sections 14, 14a, 15, 16, 17, and 18 under the Shipping Act, 1916." The Department is asked to effect discontinuance of the alleged violations and to award reparation.

Respondent is a member of the North Atlantic/West Coast of Italy Conference, an association of carriers operating vessels from North Atlantic ports of the United States to ports on the west coast of Italy, which functions under an agreement approved pursuant to section 15 of the Shipping Act, 1916. Rates for eastbound transportation, together with rules governing their application, are contained in a tariff issued by the conference and are binding upon all members. One of such rules provides:

RETURNED GOODS. Rates as per tariff to be applied.

and is testified to have uniform application to movements of returned goods. It is not disputed that the 41-cent rate charged was the rate in the tariff applicable to goatskins which respondent was under obligation to charge and collect.

Complainant asserts that on foreign goods returned to original port of shipment, other steamship lines apply the same rate for the return movement as had been charged by them for transportation to the United States. Two instances in which complainant paid inward rates to other carriers on returned shipments were shown but neither involved shipments from or to Italian ports. There is no requirement in the Shipping Act that rates and practices of carriers engaged in any particular trade shall be those which carriers in another trade must observe; and, therefore, the fact that respondent observes a practice respecting returned cargo different from that of carriers in other trades in and of itself does not establish a violation of the Shipping Act.

According to complainant, New York City is probably the most important goatskin center in the world, large lots being sent there

on consignment from Brazil, Mexico, and China and either utilized in the United States or shipped to other countries wherever there may be a call for them. Respondent's rate from New York to Italy is testified to be in excess of that to Continental ports such as Havre, Antwerp, and Rotterdam. In the words of the president of the complainant "different types of skins that come into New York might very conceivably go to Italy, were it not for the fact that the charges and freight rates are so exorbitant as to prevent it and compel these goods to go from Mexico and South American ports to Europe, either directly or indirectly, or give the buyers in France, Belgium, and Germany an advantage in bidding for the goods that might from time to time go to Italy." This witness also testified that he was "not saying that the Italian Line charges us more than they charge anybody else, but I do say that the Italian Line charges us a rate which shuts us out and shuts the port of New York out from doing business in Italy, as a result of which such business on skins going to Italy as may be done is done through some other port, either directly from South America or Central America to Italy, or via Havre, Bordeaux, or some other ports in Europe." Complainant's position is that respondent, by charging an eastbound rate which is higher than its westbound rate, prefers the merchants doing business in Havre, Bordeaux, Antwerp, and other European ports to the disadvantage of complainant, although to the knowledge of complaining witness the Italian Line does not serve those ports, and there is no evidence that the Italian Line operates from South or Central America or from Mexico to Italy. No evidence was produced by complainant of the rates of any carrier operating from Mexico, Central, or South America to Italy, or of the rates of any carrier operating either from those countries or from New York to European ports at which goatskins may be transshipped to Italian destinations; or that if respondent's rate from New York to Italy were the same as the westbound rate, shippers from the United States would be in a competitive position with shippers from Mexico, Central America, or South America or that the eastbound rate of respondent is unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Nor is there any evidence that the returned bales of goatskins are representative of the type which are exported from the United States; thus precluding adequate comparison of respondent's westbound weight rate with its eastbound measurement rate.

Respondent's witness testified that in making rates consideration is given to the weight, measurement, and value of the package, competitive conditions, the kind of service required, and the very important factor of volume of traffic. The greater the volume the

more likely the rate will be a lower rate per unit. The movement of goatskins from the United States to Italy is described as relatively small compared with the movement from Italy to the United States, and the traffic manager of respondent refers to this condition as the reason for a difference between westbound and eastbound rates. To the recollection of this witness, during the entire year 1934, his line carried no goatskins from New York to Italy other than the shipment of complainant under discussion, and he did not remember ever having been asked before for a rate on such skins to Italy. Substantiating this is the testimony on behalf of complainant that there are relatively few American goatskins, and the returned shipment of August 18, 1934, was the only shipment complainant ever made from New York to Italy which its traffic representative could recall. When making eastbound rates no consideration has ever been given to the effect upon the trade in goatskins with Italy that would result from a more favorable freight rate, because there has never been any request made for space for any quantity of goatskins. Questioned whether he could say definitely that a more substantial volume of goatskins would be offered by complainant and others for transportation if the eastbound rate of the Italian Line were lowered, complainant's president replied: "I would say, given equal conditions, 'yes.' That is dependent entirely upon market conditions, but I think with a market available I would say there would be from time to time a fair movement of goods to Italy, where there is a large glove industry already in existence and developing, and where there is a very large leather industry being fostered." Of bearing in this relation is the statement of respondent's traffic manager that "if the shipper can at any time put anything of interest before us, it will be considered fairly."

The record shows no undue or unreasonable prejudice or disadvantage to complainant under section 16 or any unjust discrimination under section 17 of the Shipping Act on its shipment to Italy as it was charged the tariff rate required to be exacted of all shippers.

The complaint also alleges a violation of section 18 of the Shipping Act, but that section does not cover foreign commerce. In this instance, however, the rate under attack was fixed by a group of carriers acting in conference relationship under an agreement which is lawful only when, and as long as, approved by this Department under authority of section 15 of the Shipping Act. 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. The shipment on which reparation is sought in this

proceeding, however, was an isolated one, and there is no evidence to justify a conclusion that the present rate is preventing tonnage from moving. The mere fact that the rate in the reverse direction is substantially lower does not justify a finding that the rate under attack is unreasonable or in any other way detrimental to our commerce. The carriers have indicated their willingness to consider a reduction in the rate if the complainant or any one else will submit data indicating a reasonable possibility of developing business. It is expected that conferences will at all times give careful consideration to such requests and supporting data.

No testimony was offered in support of the alleged violations by respondent of sections 14 and 14a relative to deferred rebates, fighting ships, retaliation against shippers, unfair or unjustly discriminatory contracts, or unfair treatment of shippers.

The Department finds that no violation of the Shipping Act, as alleged, has been established. An order dismissing the complaint will be entered.

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DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 126¹

INTERCOASTAL INVESTIGATION, 1935

Submitted May 25, 1935. Decided July 3, 1935

1. Respondents' tariffs fail to show plainly the places between which freight is carried; or to name all rates and charges for or in connection with transportation between intercoastal points on their own routes, or between intercoastal points on their own routes and points on the routes of other carriers by water with which they have established through routes for intercoastal transportation; or to state separately each terminal or other charge, privilege, or facility, granted or allowed, or the rules and regulations which change, affect, or determine such rates or charges, or the aggregate of such rates or charges, or the value of the service rendered to consignors or consignees, in violation of section 2 of Intercoastal Shipping Act, 1933, and each respondent required to amend its tariffs in the manner indicated.
2. Performance by respondents formerly members of United States Intercoastal Conference, Calmar Steamship Corporation, and Shepard Steamship Company of certain services for or in connection with intercoastal transportation without proper tariff authority; or their failure to collect tariff charges for certain such services, found to be in violation of section 2 of Intercoastal Shipping Act, 1933.
3. Practice of Shepard Steamship Company to name tariff rates and charges lower by fixed percentages than those of its competitors for like intercoastal transportation results in undue and unreasonable advantage to it, undue and unreasonable prejudice and disadvantage to its competitors, and is unjust and unreasonable, in violation of sections 16 and 18 of Shipping Act, 1916, and respondent required to cease and desist from such unlawful practice.
4. Establishment and maintenance by respondents formerly members of United States Intercoastal Conference, Calmar Steamship Corporation, and Shepard Steamship Company of uniform rates and charges for inter-

¹ This report includes Nos. 114, *Luckenbach Steamship Company, Inc. v. Calmar Steamship Corporation*; 119, *Howard Terminal et al. v. same*; 121, *American-Hawaiian Steamship Company et al. v. same*; 152, *(Arrow Line) Sudden and Christenson et al. v. Shepard Steamship Company*; and 154, *American-Hawaiian Steamship Company et al. v. same*.

coastal transportation between points on the Atlantic Coast and points on the Pacific Coast found to be in the public interest. Suggestions to obtain rate stability made.

5. "Through routes" and "through rates" defined, and all common carriers by water parties thereto for intercoastal transportation required to file proper tariffs with the department.
6. Rates and charges for intercoastal transportation from and to Sacramento, Cal., not shown to be unreasonable, unduly preferential or prejudicial, or otherwise unlawful, and complaint in No. 119 dismissed.
7. So-called port equalization rules contained in tariffs of respondents formerly members of United States Intercoastal Conference, Calmar Steamship Corporation, and Shepard Steamship Company are unlawful in violation of section 2 of Intercoastal Shipping Act, 1933, and should be cancelled.
8. Filing of rates and charges between intercoastal points as to which no transportation service is maintained not required by law, and should be cancelled.
9. Practice of members of Gulf Intercoastal Conference to exact higher rates and charges from shippers who have not executed rate contracts than from shippers who have done so, for like intercoastal transportation, found unlawful in violation of sections 16 and 18 of Shipping Act, 1916, and respondents required to cease and desist from said unlawful practice.
10. Contract rate systems of Calmar Steamship Corporation and Shepard Steamship Company found in violation of section 2 of Intercoastal Shipping Act, 1933, and sections 16 and 18 of Shipping Act, 1916, and respondents required to cease and desist from said violations of law.
11. "Contract carriers" defined and all such carriers by water engaging in intercoastal commerce required to file proper tariffs with the department.

Roscoe H. Hupper, R. C. Thackara, Frank Lyon, T. F. Lynch, R. F. Burley, T. S. Burton, Oliver P. Caldwell, John W. Chapman, W. F. Cogswell, G. A. Dundon, James A. Farrell, Jr., R. A. Lauckhardt, F. W. S. Locke, Edward B. Long, Godfrey MacDonald, Walter S. McPherson, A. J. Mouris, R. A. Nicol, W. W. Nottingham, W. P. Rudrow, J. F. Schumacher, Luke D. Stapleton, Jr., J. C. Strittmatter, and Donald Watson for carriers formerly members of United States Intercoastal Conference and States Steamship Company.

R. T. Mount, W. H. Warley, and F. A. Bull for Calmar Steamship Corporation; *Harold S. Deming, Otis N. Shepard, and A. L. Burbank* for Shepard Steamship Company.

Elisha Hanson, Frank Lyon, C. W. Cook, E. Holzborn, and C. Y. Roberts for carriers members of Gulf Intercoastal Conference.

R. J. Acheson for Border Line Transportation Company and Puget Sound Navigation Company; *C. H. Carlander and F. E. Lovejoy* for Puget Sound Freight Lines; *A. Grimison* for Skagit River Navigation & Trading Company; *G. H. Baker and H. M. Wade* for California Inland Water Carriers' Conference; *Frank V. Barns* for Atlantic & Great Lakes Steamship Corporation; *C. E. Becker, Lawrence Chaffe, H. J. Niemann, and W. G. Oliphant* for Inland Waterways Corporation; *M. W. Howe* for Mississippi Valley Barge Line

Company; *W. L. Bird* and *C. B. Kellogg* for Munson Steamship Line; *F. Riker Clark* for American Foreign Steamship Corporation; *T. J. Kehoe* for Pacific Steamship Lines, Ltd.; *T. H. Kidd* for South Atlantic Steamship Line; *F. J. Larkin* for Larkin Transportation Company; *L. J. McKim* and *J. C. Stone* for The California Transportation Company, Sacramento Navigation Company, and Fay Transportation Company; *C. L. Meek* and *Arthur B. Wellington* for Bay Cities Transportation Company and Erikson Navigation Company; *Melville J. Mendel* for Respress Transport Corporation; *John J. Seid* for Crown Zellerbach Corporation and Western Transportation Company; *D. G. Sissons* for California Steamship Company and Los Angeles Steamship Company; and *E. Holzborn* for Coast Transportation Company.

Wilbur LaRoe, Jr., *Randolph Paul*, and *Herbert A. Tighe* for The Union Sulphur Company.

Fayette B. Dow, *Harry S. Elkins*, *Allan P. Matthew*, *John O. Moran*, and *T. G. Differding* for Howard Terminal, Encinal Terminals, and Parr-Richmond Terminal Corporation; *Markell C. Baer* and *Robert M. Ford* for Port of Oakland; *Edwin G. Wilcox* for Oakland Chamber of Commerce; *Hal Remington* for San Francisco Chamber of Commerce; *B. C. Allin* for Stockton Port District; *H. E. Manghum* and *W. G. Stone* for Sacramento Chamber of Commerce; *Hugh R. Bradford* for City of Sacramento; and *Ralph H. Cowing* for County of Sacramento, Calif.

J. C. Albert, *B. M. Angell*, *M. M. Ansley*, *C. D. Arnold*, *J. M. Arnold*, *A. J. Bacon*, *K. L. Baird*, *Gustave Breaux*, *Fred R. Brown*, *W. H. Brusche*, *F. A. Burke*, *B. H. Carmichael*, *Philip H. Carroll*, *Alfred H. Catterson, Jr.*, *Frank M. Chandler*, *M. A. Clark*, *E. M. Cole*, *W. H. Connell*, *Allen R. Cornelius*, *Geo. B. Cromwell*, *T. C. Crouch*, *Frank S. Davis*, *R. A. Ellison*, *W. Elstrott*, *Charles J. Fagg*, *C. S. Foster*, *W. B. Fox*, *H. M. Frazer*, *S. P. Gaillard, Jr.*, *Carl Giessow*, *Wm. H. Gilbert, Jr.*, *Benjamin S. Greenfield*, *Ernest Gribble*, *Geo. O. Griffith*, *E. K. Heap*, *Walter P. Hedden*, *H. R. Higgins*, *C. L. Hilleary*, *J. K. Hiltner*, *R. F. Hobby*, *P. L. Hollingsworth*, *R. H. Horton*, *Geo. T. Jenkisson*, *R. C. Johnston*, *Wilbur LaRoe, Jr.*, *Clyde M. Leach*, *A. G. Linnemann*, *F. W. S. Locke*, *Wm. A. Lockyer*, *R. D. Lytle*, *M. J. McCarthy*, *Walter W. McCoubrey*, *Wm. McCuen*, *E. W. McKay*, *M. J. McMahon*, *H. E. Manghum*, *Mason Manghum*, *F. W. Manson*, *A. V. Mattingly*, *J. F. Meyer*, *A. E. Mockler*, *W. M. Moor*, *Cecil A. Morse*, *Edgar Moulton*, *John D. Mummert*, *C. S. Nelson*, *Rea M. Nielson*, *Frank A. Parker*, *N. O. Pedrick*, *G. H. Powder*, *W. F. Price*, *C. F. Reynolds*, *A. J. Ribe*, *Frank Rich*, *H. G. Schad*, *Joseph Scott*, *Chas. R. Seal*, *E. G. Siedle*, *Jas. A. Shirras*, *Chas. A. Skeen*, *C. M. Smith*, *Stuart J. Steers*, *Rene A. Stiegler*, *A. C. Teal*, *W. C.*

Thies, Osborn Van Brunt, A. F. Vandegrift, H. J. Wagner, W. D. Hall, F. E. Wallace, Dabney T. Waring, Carl A. Welsh, J. R. West, Arthur T. White, A. J. Whitman, S. H. Williams, E. E. Williamson, H. W. Wills and Alex Zeeve for shippers, receivers, terminals, rail carriers, and civic and commercial organizations.

REPORT OF THE DEPARTMENT

This proceeding, instituted by the department upon representations that common carriers by water in intercoastal commerce are not fully complying with the provisions of law, is an investigation into and concerning the lawfulness of the practices, services, and charges of such carriers relating to or concerning (a) classification of vessels or lines for rate-making purposes and resulting rate differences; (b) pooling of revenues and effect thereof on rates; (c) receipt, handling, storing, and delivery of property at terminals within port districts; (d) holding out to perform transportation services, or services in connection therewith, by themselves when such services are, in whole or in part, performed by another carrier, and absorptions of the charges of such other carriers; (e) performance of transportation services, or services in connection therewith, in an agency or other capacity allegedly to be other than as common carriers by water in intercoastal commerce as such term is defined in the Intercoastal Shipping Act, 1933; (f) extension of their services to additional ports and rates to and from such additional ports; (g) removal, in whole or in part, of differences in the aggregate of rail and water rates and other charges through different ports; (h) performance of transportation services, or services in connection therewith, without proper tariff authority; (i) nonperformance of services which by proper tariff provisions or otherwise they hold themselves out to perform; (j) observance of the rates, classifications, rules, and regulations contained in tariffs properly filed with the department; (k) performance of transportation services, or services in connection therewith, under private contracts with shippers; and (l) competition between members of the Gulf Intercoastal Conference and the United States Intercoastal Conference.

All common carriers by water parties to tariffs on file with the department naming rates for transportation of property in intercoastal commerce were made respondents² in the proceeding. Pub-

² Alameda Transportation Company; American Foreign Steamship Corporation; American-Hawaiian Steamship Company; American Line Steamship Corporation (Panama Pacific Line); American Tankers Corporation; Argonaut Steamship Line, Inc.; Atlantic & Great Lakes Steamship Corporation; Baltimore and Carolina Line, Inc.; Bay Cities Transportation Company; Border Line Transportation Company; California Steamship Company; The California Transportation Company; Calmar Steamship Corporation; Chamberlin Steamship Company, Ltd.; Coast Transportation Company, Inc.; Crowley

lic hearings were held in New York, N. Y., San Francisco, Cal., and New Orleans, La. Testimony was given by many witnesses, including representatives of respondents, shippers, manufacturers, terminal companies, port authorities, chambers of commerce, and traffic associations. The records in Nos. 114, 119, 131, 139, 141, 144, 148, 152, 154, 161, and 162 involving related subjects are stipulated into the record. The evidence, which includes returns to questionnaires calling for financial and statistical information not practicable of development in oral form, has been generally frank and full and the record fairly presents the existing situation as to each of the subjects of investigation. Information was also developed of record regarding the chartering of vessels to shippers for the intercoastal transportation of property.

GENERAL SITUATION

The term "common carrier by water in intercoastal commerce" as used in the Intercoastal Shipping Act, 1933, includes every common and contract carrier by water engaged in the transportation for hire of property between one state of the United States and any other state of the United States by way of the Panama Canal. Although transportation by water between points on the Atlantic and points on the Pacific coasts of the United States is not of recent origin, intercoastal commerce as known at present owes its development to the building of the Panama Canal. However, not until after a large fleet built by the government during the war period was made available to private operators in 1920, and a subsequent decrease in foreign commerce, did vessels in large number enter and remain in the intercoastal trade. The table below shows the num-

Launch & Tugboat Company; Dollar Steamship Lines Inc., Ltd.; Erikson Navigation Company; Fay Transportation Company; Gulf Pacific Mail Line, Ltd.; Hammond Shipping Company, Ltd. (Christenson-Hammond Line); The Harkins Transportation Company; W. E. Hedger Transportation Co.; Hosford Transportation Company; Inland Waterways Corporation; Isthmian Steamship Company; Larkin Transportation Company; Los Angeles-Long Beach Despatch Line; Los Angeles-San Francisco Navigation Company, Ltd.; Los Angeles Steamship Company; Luckenbach Gulf Steamship Company, Inc.; Luckenbach Steamship Company, Inc.; McCormick Steamship Company; Merchants & Miners Transportation Company; Mississippi Valley Bargé Line Company; Mobjack Bay Line; Munson Steamship Line; Napa Transportation & Navigation Company; National Motorship Corporation; Nelson Steamship Company; Pacific Atlantic Steamship Company (Quaker Line); Pacific Coast Direct Line, Inc.; Pacific Steamship Line, Ltd. (The Admiral Line); Panama Mail Steamship Company (Grace Line); Puget Sound Freight Lines; Puget Sound Navigation Company; E. V. Rideout Company; Richmond Navigation & Imp. Company; Sacramento Navigation Company; San Diego-San Francisco Steamship Company; Seaboard-Great Lakes Corporation; Shaver Forwarding Company; Shepard Steamship Company (Shepard Line); Skagit River Navigation & Trading Company; South Coast Steamship Company; States Steamship Company; Sudden & Christenson (Arrow Line); Sudden Steamship Company; Swayne & Hoyt, Ltd. (Gulf Pacific Line); The Union Sulphur Company; Weyerhaeuser Steamship Company; Williams Steamship Corporation.

ber of vessels and their deadweight tonnage operated or available for operation in the intercoastal trade at July 12, 1934, by American-Hawaiian Steamship Company³ and other respondents which maintain direct service between points on the Atlantic Coast or Gulf of Mexico and points on the Pacific Coast. It does not include vessels of on-carriers, that is, respondents interchanging freight in intercoastal commerce but the vessels of which do not go through the Panama Canal.

Name	Number of vessels	Aggregate dead-weight tonnage	Name	Number of vessels	Aggregate dead-weight tonnage
American-Hawaiian.....	22	207,032	Nelson.....	14	86,904
Panama Pacific.....	5	79,440	Quaker.....	17	153,798
Argonaut.....	8	74,646	Pacific Coast Direct.....	4	47,000
Calmar.....	12	109,114	Grace.....	8	51,490
Dollar.....	16	207,100	Shepard.....	4	34,781
Gulf Pacific.....	10	66,890	Arrow.....	6	51,682
Gulf Pacific Mail.....	4	25,968	Weyerhaeuser.....	4	47,000
Isthmian.....	28	265,589	Williams.....	7	67,763
Luckenbach Gulf.....	6	60,968			
Luckenbach.....	22	253,635	Total.....	204	1,855,402
McCormick.....	7	64,602			

Pacific Coast Direct only operates westbound and Weyerhaeuser in the opposite direction. The 4 vessels operated by one westbound are the same vessels operated by the other eastbound. This reduces the total number of vessels shown in the table to 200 and the aggregate dead-weight tonnage to 1,808,402. Two of the vessels of American-Hawaiian are motorships.

Respondents generally compete with each other and with rail carriers. This competition, always intense and bitter, has not been conducted along lines of benefit to the general shipping public, or to respondents themselves, or to the maintenance of an adequate merchant marine. The trade is characterized by individualistic operations and, as hereinafter will be shown, in their struggle for traffic respondents have gone beyond the limits permitted by law. This investigation was instituted with a view to making such corrections as might be deemed desirable.

³ Hereafter called American-Hawaiian. Other shortened terms in this report are Panama Pacific for American Line Steamship Corporation; Argonaut for Argonaut Steamship Line, Inc.; Calmar for Calmar Steamship Corporation; Dollar for Dollar Steamship Lines Inc., Ltd.; Gulf Pacific for Swayne & Hoyt, Ltd.; Gulf Pacific Mail for Gulf Pacific Mail Line, Ltd.; Isthmian for Isthmian Steamship Company; Luckenbach Gulf for Luckenbach Gulf Steamship Company, Inc.; Luckenbach for Luckenbach Steamship Company, Inc.; McCormick for McCormick Steamship Company; Nelson for Nelson Steamship Company; Quaker for Pacific-Atlantic Steamship Co.; Pacific Coast Direct for Pacific Coast Direct Line, Inc.; Grace for Panama Mail Steamship Company; Shepard for Shepard Steamship Company; Arrow for Sudden & Christenson; Weyerhaeuser for Weyerhaeuser Steamship Company; and Williams for Williams Steamship Corporation.

COOPERATIVE AGREEMENTS—CONFERENCES

When the intercoastal trade assumed larger proportions, to stop if possible the existing demoralization and to obtain some degree of stability in the rates, much demanded by shippers and carriers alike, some of the principal carriers in the trade voluntarily associated themselves in two groups or conferences, permitted by section 15 of the Shipping Act, 1916. These groups seem to have followed geographical lines. One, known as United States Intercoastal Conference, was organized in 1920 by carriers operating between Atlantic and Pacific coast points. The other, known as Gulf Intercoastal Conference, was organized about 1923 by carriers operating between Gulf of Mexico and Pacific Coast points.

United States Intercoastal Conference.—The troubles besetting this conference were always deep-rooted and the conference never attained much success. The invariable results were collapses of the conference followed by severe rate wars, heavy losses, uncertainty on the part of shippers as to what their competitors were being charged, a repetition of the process of organizing the conference to fall apart in a short time. A brief history of this conference is contained in *Intercoastal Rates of Nelson Steamship Company*, 1 U. S. S. B. B. 326, 328, decided November 27, 1934. It is there said:

Water transportation between Atlantic and Pacific Coast points is characterized by carrier competition increasing in bitterness and intensity. The conference, intended as a stabilizer of rates, was never able to enroll or keep within its fold all the carriers operating in this trade and otherwise it did not have a happy existence. It was organized on August 5, 1920, and functioned until June 1922. This period was followed by a severe rate war lasting until the conference was again organized on August 1, 1923. From that date it continued, as stated by a witness, "in a somewhat hit-and-miss fashion" until July 31, 1927. Reorganized on August 1, 1927, it fell apart on February 13, 1931, when a "pretty savage" rate war ensued during which each line made its own "quotations." Organized once more it functioned for only seven months, or from March 1 to September 30, 1932. A new agreement became effective on October 1, 1932, and in modified form the conference continued from time to time until last disbanded on July 31, 1934.

The conference has not been reorganized. A notable characteristic of the various agreements governing this conference was that they generally were for specific periods of short duration. At the time the conference disbanded on July 31, 1934, its membership consisted of American-Hawaiian, Panama Pacific, Argonaut, Dollar, Isthmian, Luckenbach, McCormick, Nelson, Quaker, Grace, Arrow, Williams, Pacific Coast Direct, and Weyerhaeuser. The last two lines were treated as one member. It did not include States Steam-

ship Company, a new line in this trade, Shepard or Calmar. Classification of lines for rate purposes, pooling of revenues, and port equalization were features of the conference worthy of note. These matters will be dealt with more fully hereinafter.

Gulf Intercoastal Conference.—The history of this conference is not very clear. It seems that Pacific Caribbean Gulf Line was the first to operate in the Gulf-Pacific Branch of the intercoastal trade. It commenced operations about August 1920. American-Hawaiian followed shortly thereafter but for a brief period. Luckenbach, in 1921, was the next line to enter that service. Contemporaneously Luckenbach was a member of United States Intercoastal Conference and cooperated with Pacific Caribbean Gulf Line to maintain from and to the Gulf approximately the rate level maintained by that conference. This situation existed until the two lines organized the Gulf Intercoastal Conference about August 1923. The unsettled rate situation existing in the Atlantic-Pacific branch of the intercoastal trade made itself felt in the Gulf, and for that reason and others of its own the Gulf conference collapsed about April 1925. This collapse was followed by chaotic rate conditions lasting until the conference was again organized by agreement of August 15, 1927, between Gulf Pacific, successor to Pacific Caribbean Gulf Line, Luckenbach, Redwood Steamship Company and Transmarine Corporation. The withdrawal of Redwood Steamship Company on March 1, 1928, and its subsequent "rate cutting tactics" brought about the second collapse of the conference. The record shows that thereupon "a very vicious rate war resulted which greatly depleted the treasuries of all the four lines operating in the trade." This rate war continued until February 8, 1929, when the conference was again organized by all the carriers except Redwood Steamship Company. The organic agreement was amended on September 27, 1929, so as to permit the withdrawal of Luckenbach and the membership in the conference of Luckenbach Gulf. Transmarine Corporation ceased operations late in January or early in February 1930. On October 29, 1930, Redwood Steamship Company again entered the conference. Shortly thereafter that line was taken over by Gulf Pacific. This is said to have put a stop to the general rate cutting practices in the Gulf. The agreement was further amended on April 16, 1932, so as to permit admission of Gulf Pacific Mail in the conference. Thus constituted by Gulf Pacific, Luckenbach Gulf, and Gulf Pacific Mail but under a new agreement filed with the department on January 22, 1934, amended February 20, 1934, the conference has continued in existence. Gulf Pacific Mail has no vote in the conference. It operates under a mail contract, Route No. 55 from Seattle, Wash., to Tampico, Mexico. Its vessels return to

Pacific Coast under charter to Gulf Pacific. Unlike carriers in the United States Intercoastal Conference, carriers in the Gulf conference have always maintained uniform rates, have never provided for pooling of their revenues, nor for port equalization. Some time ago Gulf Pacific and Luckenbach entered into an agreement whereby the sailings of the two lines are staggered and thus maintain coordinated weekly service from the principal Gulf ports.

The various subjects of the investigation and the chartering of vessels to shippers for the intercoastal transportation of property will now be taken up in the order stated. The complaint and answer cases included in this report relate to some of the subjects of the investigation and each will be disposed of with the subject to which it relates.

(a) Classification of vessels or lines for rate-making purposes and resulting rate differences

Nos. 152 and 154

This subject pertains only to respondents operating in the Atlantic-Pacific branch of the intercoastal trade. Hearings in this case commenced on February 26, 1934. The conference was dissolved on July 31, 1934, and additional evidence was received of record on this subject at hearings held subsequent to the dissolution of the conference. The complaints in Nos. 152 and 154 were heard together on November 16, 1934, and that record was stipulated into the record here.

Prior to the enactment of the Intercoastal Shipping Act, 1933, carriers operating between points on the Atlantic and points on the Pacific coasts via The Panama Canal were only required to file their maximum rates. Whether such rates were the same over the various lines is of no interest, for the carriers never observed them. What is of interest is that because of larger volume of traffic moving east-bound than west-bound no controversy has ever arisen between carriers on east-bound traffic, that on west-bound traffic the tariffs filed under the Shipping Act, 1916, named rates considerably higher than those charged the shippers, that as hereinafter indicated, the rates charged the shippers have not always been the same over the various lines, and that the many collapses of the conference and rate wars so freely engaged in by the carriers resulted from their failure to reach a satisfactory understanding in respect of west-bound rates.

On west-bound traffic tariffs naming uniform rates were maintained by carriers members of the conference from August 5, 1920, until June 1922. This conference period was followed by a severe rate war that lasted until the conference was again organized on

August 1, 1923. The conference then functioned until July 31, 1927, and during this period carriers operating vessels not more frequently than once every 14 days, designated class "B" lines, charged on all commodities, except iron or steel articles, 5 percent, maximum 7.5 cents per 100 pounds, less than the other members of the conference, designated class "A." The conference was again organized on August 1, 1927, and from this date until its collapse on February 13, 1931, tariffs naming uniform rates were maintained by all carriers except on certain commodities as to which the "A" lines charged 5 cents per 100 pounds more than the "B" lines. As hereinbefore shown, the collapse of the conference was followed by a "pretty savage" rate war during which each line made its own "quotations." Some of the lines had executed rate contracts with shippers. The conference as reorganized on March 1, 1932, functioned but for 7 months, or until September 30, 1932. This conference period was as notable as it was brief. From the agreement then in force it appears that the "B" line contract rates in effect February 1, 1931, or the tariff rates where no contract rates existed, became the basis for the tariffs adopted by the conference carriers. It was also during this period that for the first time the conference recognized a carrier claiming itself entitled to charge rates lower than the "B" line rates. That carrier was Shepard and according to the conference agreement became a "C" line. The following is taken from the agreement in question:

FIFTH. (a) All lines agree to abide by tariffs east-bound and west-bound to be immediately published and made effective March 1, 1932, in which tariff carload rates shall be fixed at "B" line contract rates in effect February 1, 1931, or tariff rates where no contract rates existed.

* * * * *
SEVENTH. Lines sailing not more frequently than every fourteen days with advertised transit time of twenty-one days from north of Hatteras and twenty days from Hampton Roads shall be considered as "B" lines and shall quote "B" line rates.

* * * * *
EIGHTH. Lines sailing not more frequently than an average of 22-day intervals, with the same transit restrictions as provided in Paragraph Seventh, shall be considered as "C" lines and shall be permitted to quote:

5 percent under "B" lines up to and including items rated at 40 cents, exception iron and steel.

7½ percent under "B" lines on items over 40 cents with a limit of 15 cents per 100 lbs., excepting iron and steel; * * *

NINTH. Lines not falling within the description stated in either Paragraph Seventh or Paragraph Eighth shall be considered as "A" lines and on items stated in amended handicap list of which copy is appended hereto and made a part hereof, said lines shall quote rates 50 cents per ton higher than the rates quoted by the "B" lines under Paragraph Seventh hereof, on such items; Quaker Line to quote same rates as "A" lines from Delaware River ports.

The record makes it clear that after considerable trading Shepard was admitted in the conference at its own terms to prevent it from naming rates much lower than those it was willing to name as a member of the conference. The collapse of the conference as reorganized on March 1, 1932, was precipitated by the fact that three weeks thereafter practically all the "B" lines reduced their sailings and became "C" lines under the terms of the agreement.

The conference as reorganized on October 1, 1932, consisted only of "A" and "B" lines. "B" lines were those sailing not more frequently than an average of 10 days with advertised transit time of 21 days from last loading port north of Cape Hatteras, or 20 days from Hampton Roads, to the first port of discharge on the Pacific Coast. All others were "A" lines. Following the custom of the trade, tariffs naming uniform rates were adopted by the "A" and "B" lines on east-bound traffic. On west-bound traffic the "B" lines charged, and still charge, 2.5 cents per 100 pounds on both carload and less-than-carload lots less than the "A" lines on commodities included in the so-called handicap list, which is said to represent approximately 15 percent of the tariff items.

The tariffs naming westbound rates filed by Calmar in compliance with the filing requirements of the Intercoastal Shipping Act, 1933, were made 10 percent below what it at the time supposed the conference "A" line rates would be. Calmar had executed contracts with shippers as to some of its rates. The lawfulness of its contract rate system is in issue in No. 121. Subsequent to the filing of tariffs under the statute mentioned an understanding was reached whereby Calmar would increase its noncontract rates to the level of the "B" rates and the conference members, if they so desired, would reduce their rates to meet the Calmar contract rates. This understanding was being carried out when the conference disbanded on July 31, 1934. At present the level of the westbound and eastbound rates of Calmar approximates that of the "B" line rates.

To raise revenue for a pool provided by the agreement governing the conference as reorganized on October 1, 1932, the conference carriers imposed a surcharge of 3 percent over the prevailing eastbound and westbound rates except on refrigerator cargo, baggage, and passenger automobiles. A similar surcharge was contemporaneously imposed by Shepard over its rates, thus maintaining the existing uniformity on the eastbound rates. Effective March 21, 1934, the conference rates were increased by 3 percent and the surcharge rule was eliminated. About the same time Shepard eliminated its surcharge rule, but its rates were not similarly increased, with the result that its eastbound rates became and still are approximately 3 percent lower than the conference rates on all commodities except lumber, on

which the rates are the same. On the ground that it does not operate as many vessels and that its vessels are not as fast as those of some of the other carriers, on westbound traffic Shepard has always considered itself entitled to name rates 5 percent, when the rate is 40 cents per 100 pounds or less, and 7.5 percent when the rate is more, lower than the lowest competitive rate in existence. As in its opinion the surcharge should not have been made part of the conference rates, in arriving at the differentials to which it claims itself entitled it disregarded 3 percent of the competitive rate when named by the conference carriers. Thus when the lowest competitive rate was that of a former "B" line member of the conference the Shepard tariff generally names westbound rates approximately 8 percent when the rate is 40 cents per 100 pounds or less, and 10.5 percent when the rate is more, lower than such "B" line rate except on specific commodities as to which Shepard has filed rates to conform to the 5 and 7.5 percent differentials. As on commodities in the handicap list the "A" line rates are 2.5 cents per 100 pounds higher than the "B" line rates, on such commodities the Shepard differentials are greater by that amount under the "A" line rates than under the "B" line rates. The lawfulness of Shepard's practice to name rates lower than those maintained by its competitors is involved in Nos. 152 and 154.

States Steamship Company observes the class "B" rates.

The record makes clear that the conference rates on file are the offspring of provisional compromises forced by carrier competition. They do not adjust to any other system of rate making. The rates of Shepard and Calmar were made with relation to the conference rates and are equally defective. No uniform system of accounting is used by respondents. Some of them engage in intercoastal transportation of passengers or in trades other than intercoastal and do not segregate their figures. However of the sixteen affected respondents for 1933 eleven showed a gross operating profit of \$3,535,881.73 and five a gross operating loss of \$608,828.90 before interest, depreciation, and taxes, except in one case in which these items were deducted. At December 31, 1933, the net worth of the floating equipment, land, buildings and other property and equipment ashore of thirteen of these respondents aggregated slightly over \$50,000,000. For that year seven of such carriers showed a net operating profit aggregating approximately \$1,806,000 and six a net operating loss aggregating approximately \$2,546,000, or a net operating loss of about \$740,000 for the group. Many of them owe large sums to the government on ship purchases and construction loans. The record is devoid of information regarding efficiency of the management, but

the conclusion is inescapable that this branch of the intercoastal trade is not in a healthy financial condition.

In addition to the fundamental defect just pointed out, Agent Thackara's tariff SB-I No. 4, filed on behalf of the conference carriers, Calmar's tariff SB-I No. 1, and Shepard's tariff SB-I No. 1, naming the westbound rates, charges, and rules now in effect, are defective in many material respects. This is also true of the tariffs of all other respondents. A few illustrations will make this clear.

The handicap list, which only appears from a study of individual items in Agent Thackara's tariff SB-I No. 4, embraces commodities as to which, after several months of trading and by way of compromise, it was agreed the "B" lines would charge 2.5 cents per 100 pounds less than the "A" lines. Such understanding and the further understanding that the "A" lines would not operate south of Philadelphia, Pa., are said to have effected a fairly even distribution of cargo volume between the two classes of lines. In arriving at such understandings no consideration whatsoever was given to the rights of shippers or ports. For instance, shippers of commodities in the handicap list have alternative rates while this privilege is denied shippers of related or analogous commodities not in the list; ports south of Philadelphia and shippers from such ports are denied "A" line services and alternative rates on commodities named in the list; and on eastbound transportation the same rate is charged from all ports on the Pacific Coast on commodities named in the list regardless of the line performing the service.

Section 2, Intercoastal Shipping Act, provides—

That every common carrier by water in intercoastal commerce shall file with the United States Shipping Board and keep open to public inspection schedule, 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. The schedules filed and kept open to public inspection as aforesaid by any such carrier shall plainly show the places between which * * * freight will be carried, * * * and shall also state separately each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, or charges, or the value of the service rendered to the * * * consignor, or consignee. * * * Such schedules shall be plainly printed, and copies shall be kept posted in a public and conspicuous place at every wharf, dock, and office of such carrier where * * * or freight are received for transportation, in such manner that they shall be readily accessible to the public and can be conveniently inspected.

* * * * *

From and after ninety days following enactment hereof no person shall engage in transportation as a common carrier by water in intercoastal com-

merce unless and until its schedules as provided by this section have been duly and properly filed and posted; nor shall any common carrier by water in intercoastal commerce charge or demand or collect or receive a greater or less or different compensation for the transportation of * * * property or for any service in connection therewith than the rates, * * * charges which are specified in its schedules filed with the board and duly posted and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, * * * or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such schedules.

In spite of the above provisions of law, Rule 2 of Agent Thackara's tariff SB-I No. 4 provides—

Except as otherwise provided herein, rates named herein apply from ship's tackle at Intercoastal loading port to ship's tackle at delivering carriers' discharging port via routes set forth herein, and do not include Tolls, Wharfage, or other Accessorial or Terminal Charges.

Nowhere in the tariff is the term "ship's tackle" defined. The record shows at some points this expression means the end of the ship's hook, while at other points it means place where goods rest on the dock. Whether a charge for the movement of goods between ship's hook and point of rest is collected from the shipper or absorbed by the carrier is governed by local meaning of that term.

Carriers parties to this tariff do not state separately each terminal or other charge, privilege, or facility, granted or allowed by them, as required by the above section of law. This subject is more fully discussed hereinafter.

Rule 3 of the tariff in question states in part—

(a) Except as otherwise provided, the rates set forth in Sections 1, 2, and 6 of this tariff apply via route or routes shown in the individual line's routing instructions as set forth in Section 5 of this tariff from the established loading terminals of each line at the ports named on Page No. 3 of this Tariff except New York Harbor; and, except as otherwise provided in Notes 1 and 2 hereof, from New York Harbor the rates named will only apply from the established loading or receiving terminal of each line in the following subdistricts: * * *

(b) Where reference is made to this Rule in connection with individual carrier's routes as set forth in Section 5 of this tariff, rates named herein apply when steamer calls direct and then only upon agreement in writing with individual carrier.

The tariff does not specify the "established" loading or receiving terminals. As some of the ports embrace a considerable shore line where numerous terminals are located, from the tariff it is impossible for the shipper to determine the exact place at which transportation begins or ends. Furthermore, a tariff rule such as contained in paragraph (b), which does not specifically disclose the particular requirements a shipper must meet that the written agreement there contem-

plated be executed, inevitably leads to inequality between shippers.

In Rule 4 it is provided—

(a) Except as otherwise provided for herein (see Notes 1 and 2 hereof), straight carloads of cargo delivered by rail direct to New York Harbor Loading Piers will be charged a minimum of 2½¢ per 100 pounds for the unloading thereof, which charge will be in addition to the applicable carload rate thereon.

(b) Except as otherwise provided for herein (see Note 2 hereof), trap or ferry cars containing less carload shipments, when delivered by rail direct to New York Harbor loading piers, will be charged a minimum of 5¢ per 100 pounds for unloading thereof, which charge will be in addition to the applicable less carload rate thereon.

* * * * *

NOTE 2.—Cargo of extraordinary weight and/or length, moving as carload or less carload shipments, delivered by rail direct to New York Harbor loading piers, may be subject to higher charges than those prescribed in this Rule.

From the tariff the shipper knows the minimum charge for the service in question, but the maximum charge does not appear therefrom.

Rule 5 of the tariff provides, at Philadelphia—

The American-Hawaiian Steamship Company will receive westbound less carload freight ex rail at its Municipal discharging pier and dray same at its own expense to its loading pier.

On less carload shipments arriving in Philadelphia, Pa., by railroad, carriers party hereto will assume out of the rates published herein the drayage charges on such shipments from the local freight station or stations of the railroads to the loading pier at which the cargo is loaded into steamers, when such loading pier is located on a railroad other than that via which said less carload shipments originally arrive in Philadelphia, Pa.

Carriers party hereto will absorb at Philadelphia, Pa., unloading charges on carload freight delivered by railroad, where said carload has originated at a point from which the railroad carload rate to Philadelphia loading piers of carriers party hereto is nine cents (9¢) per 100 pounds or less.

Carriers party hereto loading at piers in Philadelphia, Pa., when such piers are not equipped with string-piece track, will absorb the lighterage or floatage charges of delivering rail carriers on iron and steel from the delivering railroad to alongside carrier's ship.

Unloading from rail cars, drayage, lighterage, and floatage, such as provided for by Rules 4 and 5 are not services that fall upon respondents for they have no through route arrangements or joint through rates with rail carriers. Such expenses are incurred by them in their struggle to attract traffic to their lines, but such wasteful practices are not sanctioned by law. Rules which authorize services and facilities at no charge fail to recognize the definite relationship between service and compensation which characterizes the business of common carriers, and rules which do not disclose the specific amount absorbed, even if the charge is one that properly may be absorbed, defeat the legally established rate and unwittingly open the door to rebates.

Rule 9 of the tariff provides—

Port Equalization will be permitted on carloads only by all lines on west-bound tariff items bearing the designation "P. E." in connection with the number thereof. No Port Equalization will be permitted on L. C. L. shipments.

Port Equalization is not to be applied however, unless the rate from point of origin into the port of exit equals or exceeds nine cents (9¢) per 100 pounds and is not to exceed the actual difference in like kinds of transportation from the point of origin to the port of exit subject to a maximum equalization of three cents (3¢) per 100 pounds.

EXCEPTIONS.—In respect of Chester, Pennsylvania, it is permitted to equalize carload rail traffic at Philadelphia, Pennsylvania, as an exception to the nine cent (9¢) limit rule and exceeding the three cent (3¢) maximum aforesaid.

Dollar Steamship Lines, Inc., Ltd.—Up to 250 net tons of iron or steel, handicap or nonhandicap items, per steamer from New York on "A" rate basis.

(Panama Pacific Line) American Lines Steamship Corporation.—Up to 250 net tons of iron or steel, handicap or nonhandicap items, per steamer from New York on "A" rate basis.

(Grace Line) Panama Mail Steamship Company.—Up to 250 net tons iron or steel out of handicap list per steamer from Philadelphia on "A" rate basis.

Specific equalization privileges on the quantities of iron and steel per steamer mentioned above are noncumulative, but the measure of port equalization allowed in these specific privileges on iron and steel mentioned above may be the actual difference between the rail rates from point of origin to port of exit, subject to a maximum of six cents (6¢) per 100 pounds.

Port Equalization is not permitted of any difference in the charges assessed or claimed, for delivery of freight by private, public, or Government-owned dray, truck, or similar conveyance; nor is port equalization permitted to any extent of charges assessed or claimed for transportation of vehicles or parts thereof, moving under their own power or through the medium of some other form of transportation on the public highways.

Port Equalization is not permitted in connection with traffic originating locally at another port from which service is maintained by any other Conference line.

Port Equalization shall not be used to offset any disabilities existing between carriers in the same port, and no equalization shall be made in respect of transfer, cartage, lighterage, wharfage, or unloading charges in the same port.

The record makes it clear this rule is impossible of application unless the rates from the point of origin to the port of exit and to other Atlantic ports served by intercoastal carriers are first determined. From point of origin to port of exit shipments generally move by rail or truck. The rates of rail or truck carriers are not a part of the tariff in question nor are otherwise filed with the department. It is not unusual for the intercoastal carrier to call the office of the rail carrier transporting the shipment from point of origin to ascertain the rail rate. As stated in *Intercoastal Rates of Nelson Steamship Company, supra*, dealing with a similar rule—

To hold that a shipper must look beyond the tariffs of the carrier offering him a service to ascertain the rate would be to put the shipper under an
1 U. S. S. B. B.

onerous obligation not imposed upon him by law. The inclusion of any provision in a tariff which makes the amount of the charge depend upon the measure of a rate published in tariffs of some other carrier, and more so when such tariffs are not filed with this department, cannot too strongly be condemned.

From the exceptions to the rule it will be observed an absorption in excess of 3 cents per 100 pounds is permitted at Chester, Pa., but the tariff does not indicate the limit to such absorption. At New York, Dollar and Panama Pacific, and at Philadelphia, Grace, apply a maximum equalization of 6 cents per 100 pounds up to 250 net tons on iron and steel articles. In the case of a shipment in excess of that quantity the shipper will be charged 6 cents per 100 pounds less on the first 250 net tons than on the remainder of the weight of the shipment, and should two shippers make two separate shipments aggregating in excess of 250 net tons neither one could tell what the charges would be to him.

Rule 18 of the tariff, of general application and not restricted to New York Harbor as Rule 4, in essence provides that pieces or packages over 80,000 pounds or in excess of 40 feet in length will be accepted for transportation subject to special arrangements with individual carriers parties to the tariff. The law prohibits special arrangements between shippers and carriers unless the terms thereof are fully disclosed in the tariff.

Calmar's tariff SB-I No. 1 seems to have been patterned after Agent Thackara's tariff SB-I No. 4 and is not free from vices of the character affecting that tariff. For instance in Rule 3 it is provided:

(a) Except as otherwise provided for in this tariff, rates named in this tariff apply from end of ship's tackle at loading port to end of ship's tackle at port of discharge and will include acceptance of cargo at tailboard of truck and/or place of rest on dock, including loading from lighters, barges and/or similar equipment direct to vessel at port of loading, and at port of discharge rate will include delivery to place of rest on dock and/or to tailboard of truck and/or direct from vessel to lighters, barges, and/or similar equipment. Rates do not include tolls, car loading, or car unloading, handling, wharfage, lighterage, transfer charges, or any other expense beyond ship's tackle except as otherwise provided for in this tariff.

The tariff does not define the term "ship's tackle." Inferentially it may be gathered from this rule that "ship's tackle" is the same as ship's hook, but because of the confusion this term has created, the law will be best served by making its meaning clear in the tariff. The record shows it is impracticable for carriers, including Calmar, to accept possession or make delivery of general cargo at ship's hook, and if as used in this rule "ship's tackle" means ship's hook, the expense of moving such cargo from and to point of rest on the dock

when that service is performed for the convenience of respondents should be included in the intercoastal rate.

Paragraph (b) of the rule in question provides that rates named in the tariff apply on cargo loaded on any vessel scheduled for direct call at ports on the Gulf of Mexico from Tampa, Fla., to Corpus Christi, Tex., but it is notorious this carrier does not serve those ports. This matter is presented for determination in No. 114.

Paragraph (e) of the rule provides for port equalization in principle the same as provided for in Rule 9 of Agent Thackara's tariff SB-I No. 4. Port equalization is also practiced by this respondent on east-bound traffic, Rule 3(e) of its SB-I tariff No. 2. From these rules it is not possible for a shipper to state what the rates or charges will be, and what was stated in respect of the port equalization rule in Agent Thackara's tariff applies here with equal force.

The tariff fails to state separately each terminal charge. It only shows terminal rules for application at Baltimore, Philadelphia, and Los Angeles Harbor. Those applicable at Baltimore are as follows:

1. When railroads do not unload or absorb cost of unloading shipments from railroad equipment, or pay the cost of unloading, Calmar Steamship Corporation will absorb the cost of such car unloading, when the cargo is loaded into Calmar Steamship Corporation's vessel.

2. When the cost of railroad switching, barging, and/or lighterage to the pier at which shipment is loaded into Calmar Steamship Corporation's vessel exceeds the cost of railroad switching, barging, and/or lighterage to the nearest pier at which such cargo could be loaded for intercoastal shipment into an intercoastal vessel, the difference between such costs will be absorbed by Calmar Steamship Corporation, subject to a maximum absorption of Five cents (5¢) per One Hundred (100) pounds.

3. When railroads do not deliver or pay the expense for delivery of less-than-carload shipments from their freight stations or terminals to Calmar Steamship Corporation's dock, Calmar Steamship Corporation will absorb such delivery cost, when such less carload shipments are loaded into vessel, subject to a maximum absorption of Ten cents (10¢) per One Hundred (100) pounds.

4. When car demurrage and/or storage accrues between the time shipments arrive at railroad terminal and/or Calmar Steamship Corporation's dock, and the time such shipments are actually loaded into the vessel, such car demurrage and/or storage will be absorbed by Calmar Steamship Corporation, subject to a maximum absorption of Three cents (3¢) per One Hundred (100) pounds.

5. For operating convenience, when Calmar Steamship Corporation's vessel does not call or complete loading at Calmar Steamship Corporation's regular dock at Baltimore, but is loaded at Sparrows Point, Maryland, and shipments have been delivered to Calmar Steamship Corporation's regular dock at Baltimore and transferred from there to the dock at which the vessel is loading at Sparrows Point, and there loaded into the vessel, Calmar Steamship Corporation will absorb all costs of such transfer, including loading of lighters, barges, cars, and/or trucks and other like costs.

Identical rules apply at Philadelphia except that in Rule 5 the word "Philadelphia" is substituted in the place of the word "Balti-

more" and the words "at some other dock in the port of Philadelphia and/or Camden, New Jersey", are substituted in the place of the words "at Sparrows Point, Maryland." In addition, at Philadelphia it is provided that when Calmar's vessel loads at "piers which are not equipped with string piece track", Calmar "will absorb the lighterage or floatage charges of delivering rail carriers on iron and steel from the delivering railroad to alongside Calmar Steamship Corporation's vessel."

As to Rules 4 and 5 of Agent Thackara's tariff SB-I No. 4 it was stated that unloading from rail cars, drayage, lighterage, and floatage, are not services that fall upon respondents for they have no through route arrangements or joint through rates with rail carriers. What was there stated applies here with equal force as to loading rail cars, use of such cars, for which demurrage charges are imposed by rail carriers, and as to transfer of rail shipments from and to vessels of this respondent.

Only two terminal rules apply at Los Angeles Harbor, one of which, relating to assembling and distributing charges, has been condemned in No. 96, *In Re Assembling and Distributing Charge*, proposed report form. The terminal rules applicable at other points served by this respondent are not contained in the tariff.

For the reason stated in connection with Rule 18 of Agent Thackara's tariff SB-I No. 4, a similar rule contained in the Calmar tariff, Rule 20, applicable to heavy or long pieces or packages does not meet the requirements of law.

Shepard's tariff SB-I No. 1 contains a port equalization rule in principle the same as other such rules hereinbefore condemned. This carrier does not separately state each terminal charge. Its terminal rules, like the rules in the other tariffs under consideration, are limited to absorptions of, or allowances for, terminal and other services performed by others. Rule 3 of the terminal section of the tariff provides—

Terminal or other charges, privileges or facilities granted or allowed:

- (a) New York } ----- When shipments of soda ash complying with conditions specified in tariff item 3207 A are delivered to carriers, carrier will effect discharge of soda ash from delivering craft at carrier's expense.
Albany }
- (b) Albany ----- Car unloading and top wharfage will be absorbed by carrier only when cost of delivery from point of origin to carrier's pier at Albany exceeds cost of delivery from point of origin to other regular ports of loading of intercoastal carriers but in no event shall such absorption exceed 3¢ per 100 lbs.

- (c) Philadelphia ----- Carrier will absorb car unloading charge whenever rail freight charges from point of origin to port of exit does not exceed 9¢ per 100 lbs. Carrier may at its option shift to railroad pier for loading or absorb cost of lighterage or floatage from delivering railroad to alongside steamer.
- (e) Baltimore----- Carrier will absorb top wharfage where top wharfage is assessed by terminals at which vessel loads. Carrier will absorb car unloading charge whenever rail freight charges from point of origin to port of exit does not exceed 9¢ per 100 lbs.
- (f) Oakland----- Carrier has option of delivering direct at Oakland or affecting delivery by barge from its regular berth at San Francisco. If carrier elects to deliver by barge, cost thereof will be absorbed by vessel. Carrier will absorb Oakland terminal charge of 50¢ per net ton whether calls direct or not.
- (g) Stockton----- Carrier has option of delivering direct at Stockton or effecting delivery by transshipping river carrier from San Francisco. If carrier elects to deliver by transshipping river carrier, all on-carrying charges pursuant to delivery at Stockton will be absorbed by carrier. On all shipments to Stockton carrier will absorb State tolls of 15 cents per ton but will not absorb Stockton wharfage of 15 cents per ton.
- (h) Sacramento----- Carrier has option of delivering direct at Sacramento or effecting delivery by transshipping river carrier from San Francisco. If carrier elects to deliver by transshipping river carrier, all on-carrying charges pursuant to delivery at Sacramento will be absorbed by carrier. On all shipments to Sacramento carrier will absorb State tolls of 15 cents per ton but will not absorb Sacramento wharfage of 20 cents per ton.
- (i) Portland----- Carrier will absorb terminal handling charges of 50¢ per net ton.
- (j) Seattle----- Carrier will absorb terminal handling charges of 50¢ per net ton.

It will be observed no limit is placed upon the amount of car unloading at Philadelphia, or top wharfage or car unloading at Baltimore, or on-carrying charges on shipments destined to Stockton or Sacramento absorbed by respondent. It will be also observed that whether respondent calls direct or not at Oakland, Cal., it there absorbs terminal charges in the amount of 50 cents per ton and that if it elects to make delivery by barge at such place, it absorbs the cost thereof without specifying such amount. For the reasons hereinbefore stated such rules are not in consonance with law.

Another rule contained in Shepard's tariff which fails to meet the requirements of law is that contained in first amended page 70 reading as follows:

Ports marked # are not regular ports of loading. Cargo will be accepted for loading at such ports only when accompanied by permit issued by Carrier or Carrier's agents. Application for permit may be made to any office of the Carrier or Carrier's agents. Permit, if issued, will be in the form shown below.

This rule does not disclose the requirements a shipper must meet before a permit is issued to him. Such rule lends itself to defeating the law which makes it unlawful for any 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.

We are here concerned with vices that permeate the tariffs and not with defective individual rates. For this reason no attempt will be made to set forth in this report numerous such rates contained in the tariffs under consideration.

The law provides that no person shall engage in transportation as a common carrier by water in intercoastal commerce unless and until its schedules have been duly and properly filed and posted; that no common carrier in intercoastal commerce shall receive a greater or less or different compensation for transportation of property or for any service in connection therewith than the rates and charges which are specified in its schedules and in effect at the time; and that no such carrier shall refund or remit in any manner or by any device any portion of the rates or charges so specified, or extend or deny to any person any privilege or facility, except in accordance with such schedules. The schedules, as has been seen, must show all the rates and charges for or in connection with transportation between intercoastal points on the route of the carrier; and, if a through route has been established, all the rates and charges for or in connection with transportation between intercoastal points on its own route and points on the route of any other common carrier by water. They must also state separately each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates or charges, or the value of the service rendered to the shipper. Copies of such schedules must be kept posted in a public and conspicuous place at every wharf, dock, and office of the carrier, in such manner that they shall be readily accessible to the public and can be conveniently inspected. Any violation of any of these provisions of law is punishable by a fine of not less than \$1,000, not more than \$5,000, for each act of violation and/or for each day such violation continues.

Language could not have made clearer the intent of the legislator than as set forth in section 2 of the Intercoastal Shipping Act, 1933. This section imposes a positive duty on respondents. As one of the principal aims of the law is uniformity in treatment, the requirement of publication is to enable the shipper not only to ascertain from examination of the tariff what the exact rates and charges are to him but also to his competitor, and failure of a carrier to properly publish, file and post all of its rates and charges for or in connection with intercoastal transportation and the rules which in anywise change, affect or determine any part of such rates or charges, is as serious a violation of law as its failure to observe strictly such rates, charges and rules after they have been properly published and filed. The tariffs under consideration fall short of accomplishing the purpose of the law. Good faith might be urged in defense of past violations, but obviously could not be so urged in respect of violations after the act has been construed by the department.

For a long time affected respondents have keenly felt the need of a solution to their controversies on westbound traffic as would insure stability in the rates and permit them to operate without the constant threat of a rate war. This need is also greatly felt by the shippers, vitally interested in rate stability and dependable service that their business may be conducted along sound and serious lines. Inability of some of the affected respondents, due to their own equipment, to make as frequent sailings and as fast time in transit as other competing respondents has been the only source of disputes that have led to rate wars and trade demoralization. Such devices as grouping of lines for naming rates, pooling of revenue, port allocation and port equalization resorted to by these respondents after considerable trading and bargaining to overcome such equipment inferiority served only to arrest destructive rate wars and never afforded a satisfactory solution. The history of the conference vividly depicts the futility of efforts made by the affected respondents. In the circumstances they unanimously look to the department for permanent settlement of their difficulties.

The following table shows the number of vessels operated or available for operation at July 12, 1934, by each carrier then member of the conference, Calmar and Shepard, grouped according to designed speed in knots.

1 U. S. S. B. B.

	Number of ves- sels	Designed speed in knots																	
		9	9.5	10	10.25	10.5	10.75	11	11.5	12	12.5	12.8	13	13.5	14.5	15	16	18	20
American-Hawaiian.....	22									22									
Panama Pacific.....	5					2												3	
Argonaut.....	8			5						3									
Dollar.....	16														7	2	5		2
Isthmian.....	28			2		3		23											
Luckenbach.....	22		1	1				1	2		5	3	2	7					
McCormick.....	7			3		1		2		1									
Nelson.....	14			14															
Quaker.....	17		2	13		2													
Pacific Coast Direct.....	4			4															
Grace.....	8											4							4
Arrow.....	6																		
Weyerhaeuser.....	4			4															
Williams.....	7			3					1										
Calmar.....	12			1	6	4		1											
Shepard.....	4			3					1										

The fastest vessels are the two shown opposite Dollar with speed each of 20 knots. They are not now being operated in this trade. Although these and other vessels of Dollar carry freight they are designed or have been remodeled to carry large numbers of passengers. For this reason they are better known as passenger vessels. Other such passenger vessels are the three shown opposite Panama Pacific with speed each of 18 knots and all of the eight shown opposite Grace. Although disparity exists in the designed speed of vessels, approximately 72 percent of the vessels shown in the table, excluding the two 20-knot vessels and the four shown opposite Weyerhaeuser, which are the same as those operated by Pacific Coast Direct, have speed ranging only between 10 and 12 knots. Only seven of the vessels shown, which are passenger vessels, are under ten years of age. No freighters have been built since 1922, when American-Hawaiian built its two motorships. The average age of the vessels shown in the table, mostly built by the government during the war period, is nearly sixteen years. On the whole they are practically obsolete.

It will be remembered that during the last period of the conference, "B" lines were those sailing not more frequently than an average of 10 days with advertised time in transit from last loading port north of Hatteras of 21 days, or 20 days from Hampton Roads, to the first port of discharge on the Pacific Coast, and that all others were "A" lines. Although the number of vessels operated or available for operation by Panama Pacific was not sufficient to maintain sailings more frequently than on an average of 10 days, some of its vessels were capable of making better than the advertised transit time prescribed for the "B" lines. It was placed in the "A" group. Included in this group were also American-Hawaiian, Dollar, Luckenbach, and Grace. The number of vessels available for operation by Nelson was sufficient to observe the sailing frequency prescribed for

the "A" lines, but it chose to operate only four of its fourteen vessels and qualified as a "B" line. Other lines in this group were Argonaut, Isthmian, McCormick, Quaker, Pacific Coast Direct-Weyerhaeuser, Arrow, and Williams.

The table below contrasts the number of voyages, average number of days per voyage, and average number of nautical miles steamed per voyage from last port of loading on the Atlantic Coast to first port of discharge on the Pacific Coast during 1933 and first half of 1934.

Name	Number of voy-ages	Last port loading to first port discharge		
		Average number days per voyage	Average number nautical miles steamed per voyage	
American-Hawaiian.....	1933 ..	99	17.5	4,930
	1934 1 ..	46	17.5	4,930
Panama Pacific.....	1933 ..	25	13	4,860
	1934 1 ..	12	13	4,860
Argonaut.....	1933 ..	12	20	4,765
	1934 1 ..	6	20	4,741
Dollar.....	1933 ..	52	16	5,116
	1934 1 ..	26	15	5,116
Isthmian.....	1933 ..	39	19	4,834
	1934 1 ..	21	19	4,833
Luckenbach.....	1933 ..	59	15.5	4,935
	1934 1 ..	29	15.5	4,935
McCormick.....	1933 ..	28	21	4,800
	1934 1 ..	15	21	4,790
Nelson.....	1933 ..	12	20.5	4,472
	1934 1 ..	6	20.3	4,472
Quaker.....	1933 ..	34	20	4,803
	1934 1 ..	15	19	4,718
Pacific Coast Direct.....	1933 ..	8	20	4,746
	1934 1 ..	8	20	4,746
Grace.....	1933 ..	46	18	5,415
	1934 1 ..	22	18.5	5,408
Arrow.....	1933 ..	20	19	4,462
	1934 1 ..	11	19	4,462
Williams.....	1933 ..	24	18.5	4,450
	1934 1 ..	13	18.5	4,450
Calmar.....	1933 ..	25	20.8	4,902
	1934 1 ..	14	20.5	4,902
Shepard.....	1933 ..	15	19.5	4,695
	1934 1 ..	6	17.5	4,607

1 First half.

The value of similar comparative data submitted regarding first port of loading to last port of discharge was impaired by strike conditions prevailing at San Francisco during May, June, and July 1934. Under average number of days per voyage Dollar showed "16 & 17" for 1933 and "15 & 17" for the first half of 1934 without any accompanying explanation. Only the lower of the two figures in each case has been shown in the table. The table makes it evident that some of the lines did not adhere to the limitation imposed on advertised time in transit by the agreements in force during the last period of

the conference, which commenced October 1, 1932. For instance Isthmian only consumed an average of 19 days in transit for all the voyages shown. Similar average time was consumed by Quaker for the voyages made by it during the first half of 1934, and by Arrow during the entire period indicated. This performance by Arrow is significant in view of the fact that all of its vessels are shown to have designed speed of only 9 knots, the lowest of all vessels in this branch of the intercoastal service. Williams only consumed an average of 18.5 days for all the trips made by it during 1933 and the first half of 1934. The other "B" lines and Calmar appear to have adjusted their time in transit to conform to the conference restrictions. The average number of days in transit shown opposite Shepard for the first half of 1934, 17.5 days, is the same as that shown opposite American-Hawaiian and better than that shown opposite Grace for the same period. American-Hawaiian and Grace were class "A" lines and under the conference agreements could not operate south of Philadelphia. Shepard was not a member of the conference and its last port of loading was Philadelphia, Norfolk, Va., or Charleston, S. C. Even so, the difference in the average number of nautical miles steamed per voyage by American-Hawaiian and Shepard is not material if consideration is given to the distance involved.

The following table contrasts the number of westward voyages and payable tons of 2,000 pounds carried for the years therein indicated.

1 U. S. S. B. B.

	1900			1901			1902			1903			First half 1904			Total payable tons	Grand average payable tons per voyage
	Num-ber of voy-ages	Payable tons	Average payable tons per voyage	Num-ber of voy-ages	Payable tons	Average payable tons per voyage	Num-ber of voy-ages	Payable tons	Average payable tons per voyage	Num-ber of voy-ages	Payable tons	Average payable tons per voyage	Num-ber of voy-ages	Payable tons	Average payable tons per voyage		
American-Ha-																	
Wells.....	105	332,983	3,171	105	286,613	2,730	96	243,667	2,537	99	225,061	2,273	46	100,356	2,182	1,188,580	
Pearson Pacific.....	25	75,870	3,067	25	73,877	2,954	25	69,243	2,760	25	58,786	2,351	13	26,767	2,051	302,343	
Arden.....	29	235,293	8,110	19	127,653	6,719	14	64,326	4,595	12	29,910	2,493	6	19,750	3,202	473,944	
Dalhousie.....	26	52,693	2,025	44	70,475	1,602	52	77,315	1,487	52	85,120	1,637	28	46,391	1,784	332,984	
Isthmian.....	61	494,932	7,733	53	280,951	5,301	48	182,884	3,810	39	149,311	3,828	21	135,812	6,457	1,528,890	
Luckenbach.....	64	228,046	4,432	53	212,798	4,015	55	186,533	3,446	59	170,297	2,886	29	82,531	2,801	881,207	
McCormick.....	28	112,553	4,020	25	104,694	4,184	27	87,537	3,243	28	85,006	3,036	15	56,658	3,777	440,658	
Nelson.....	45	133,690	2,971	30	80,383	2,679	14	57,410	4,101	12	43,364	3,614	6	25,650	4,258	340,415	
Quaker.....	55	175,843	3,192	56	162,108	2,885	36	81,637	2,332	34	95,127	2,798	15	49,695	2,713	555,110	
Pacific Coast																	
Direct.....																	
Grass.....	26	14,157	545	26	21,096	811	27	41,020	1,519	46	85,429	1,873	8	11,170	1,396	23,757	
Arrow.....	32	110,229	3,445	28	88,913	3,104	18	57,650	3,197	20	67,396	2,870	11	29,242	2,638	202,353	
Williams.....	32	72,457	2,264	28	94,781	3,385	23	72,583	3,155	24	64,138	2,686	13	31,064	2,390	341,330	
Calmar.....	32	217,884	6,809	29	164,404	5,672	20	94,688	4,734	25	165,007	6,600	14	88,497	6,321	324,933	
Shepard.....	11	40,651	3,696	13	37,285	2,867	13	40,968	3,153	15	45,354	3,024	6	35,262	5,877	730,570	
																1,999,518	

1 Started operations in June 1933, and figures represent voyages made to end of June 1934.

As hereinbefore indicated Panama Pacific, Dollar, and Grace are known as passenger lines. They only transported slightly over 11 percent of the total number of payable tons carried during the period of the table. During that period the "A" lines transported an average approximating 2,511, and the "B" lines approximating 3,859, payable tons per voyage. However, because of faster and more frequent service, shippers preferred the "A" lines to the "B" lines, particularly in the transportation of high grade commodities not included in the handicap list, with the result that the revenue per payable ton of those lines was higher than that of the other lines. But large amounts of their revenue were contributed to the conference pool set up to benefit the "B" lines.

Several suggestions for a permanent settlement of carrier controversies were made of record. Pacific Coast Direct and Weyerhaeuser suggest that lines be arbitrarily grouped into class "A" and "B" according to frequency of sailings and time in transit with rates for the "B" lines 10 percent under the rates for the "A" lines. McCormick offered a similar suggestion except that in its opinion grouping of lines should rest entirely on time in transit. The suggestion of Shepard is that lines be arbitrarily divided into "A", "B", and "C" groups based on elapsed time arrived at by dividing by two the average number of days between sailings of each line and adding the quotient to the transit time, with no pooling of revenue except as strictly necessary to rectify errors which may result from arbitrary differentials to be put into effect. Argonaut and Shippers' Conference of Greater New York suggest groups "A", "B", and "C" based on frequency of sailings and time in transit. In the opinion of Argonaut rate differentials should not be less than 7.5 percent for the "B" lines and 12.5 percent for the "C" lines under the "A" line rates. In the opinion of Shippers' Conference of Greater New York it would be fair "to experiment" with differentials of 7.5 percent for the "B" lines and 15 percent for the "C" lines. All these suggestions relate only to west-bound traffic. The suggestion of Calmar is that carriers be arbitrarily divided into "A" and "B" groups based entirely on time in transit with differential of 10 percent to be observed by the "A" lines over the "B" line rates on both east-bound and west-bound traffic. They all agree that a line in a lower group should increase its rates as its service is improved. American-Hawaiian and Williams, its subsidiary, Panama Pacific, Dollar, Grace, and Luckenbach suggest all carriers be required to observe uniform rates.

Advocates of line groups for naming westbound rates point to precedents set by the conference and showings thereunder by the various lines, but the data of record does not support such contention.

For instance from the table appearing at page 425 it will be noted that Argonaut, which suggests a group "C" of lines with differentials of 7.5 and 12.5 percent under the rates for the "B" and "A" lines, respectively, in which group it hopes to be placed, by far exceeded any other conference line in average number of payable tons transported westward during the four and one-half years of the table; that Shepard, which also suggests a group "C" of lines, in which it hopes to be placed, in 1933 transported an average of 3,024 payable tons per westbound voyage as compared with an average of 2,726 payable tons for all other carriers shown in the table, and with an average of 2,514 for all carriers formerly in the conference; and that while for the first half of 1934 the average number of payable tons per voyage of Shepard increased to 5,877, or approximately 94 percent, the average number of payable tons of all other lines increased only to 3,013, or slightly over 10 percent. Furthermore, the circumstances under which the results disclosed by the table were obtained, hereinbefore fully described, were such as not to afford an intelligent basis for disposing of the subject under consideration.

Reference was made to certain differentials existing in rail rates and also in water rates. The department has no jurisdiction over rail rates. Furthermore the circumstances under which differentials in rail rates were established in the few instances mentioned do not appear of record. An examination of the conference agreements approved by the department relating to water transportation shows that out of 100 agreements at present in effect only 6 involve rate differentials. In all other instances rate uniformity is observed by the carriers. It should also be remembered that in this branch of the intercoastal trade there exist no differentials in the eastbound rates, except as hereinbefore indicated in the case of Shepard, and that in the Gulf-Pacific branch of the trade no differentials whatsoever exist in either westbound or eastbound rates. It was testified the cost of performing the Atlantic-Pacific voyage is about the same as that of performing the voyage in the reversed direction. Three groups of lines such as advocated by Shepard, Argonaut and Shippers' Conference of Greater New York existed before in this particular branch of the trade with undesirable results. This was during the period following the reorganization of the conference on March 1, 1932. The short duration of that conference period, the reason for its collapse, and the origin of the "C" group as there recognized, have been set forth hereinbefore and need not be repeated. Many carriers fear lines in "B" group would not be able to stand the pace of competition should a "C" group be recognized with the result, they claim, that in the course of time all "B" would qualify as "C" lines, as happened before. As to the suggestion of Calmar it should be stated

no sound reason appears of record for differentials on eastbound traffic.

Inferiority in equipment is a factor too changeable to afford a satisfactory basis for a permanent solution. The power to overcome such inferiority lies entirely within the control of the carrier. This applies with special force to Argonaut, Nelson, McCormick, Pacific Coast Direct, Arrow, Williams, Panama Pacific, and Grace, the equipment of which is chartered in whole or in part.

Section 1 of the Merchant Marine Act, 1920 provides—

That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, in so far as may not be inconsistent with the express provisions of this Act, the United States Shipping Board shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be obtained.

This policy and declared purpose were confirmed by section 1 of the Merchant Marine Act, 1928. In order to accomplish the declared purpose and to carry out the declared policy, those two acts, after providing for disposal of government-owned vessels, which has been done under liberal terms, provided for the setting aside of a considerable amount of money to be used in making loans to aid citizens of the United States in the construction or outfitting by them of vessels, with the condition that only the most modern, the most efficient and the most economical engines, machinery, and commercial appliances be used. The underlying purpose of those acts, as well as of the loans authorized thereby, is to promote the public interest by affording aid in such manner as to result in modern, efficient, and economical transportation service by water. Such service is a public necessity and anything to promote it is in the public interest. A difference in the price of intercoastal transportation attracts traffic to the line naming the lowest rate. This would be accomplished by the suggestions that rates be graduated according to frequency of sailing and time in transit. Such thing in effect would be placing a premium on infrequent and slow service and a penalty on the line that would give the service contemplated by law. The incentive for investment in a line that would give a modern, efficient, and economical service would be little, if any, and the result would be calamitous. Furthermore restrictions as to time in transit from last point of loading to first port of dis-

charge utterly ignore the rights of shippers and receivers of goods located elsewhere.

Shepard admits its practice of naming rates since it came into this trade in 1929 lower than the lowest competitive rate has been deliberate in order to attract traffic which it would not otherwise attract. Clearly its rates were not intended to create new traffic but to divert to its line a share of the volume available for transportation. It further admits its practice has been of some benefit to it, but the estimated cash invested in its four vessels was roughly placed at \$1,000,000 and for 1933, after deducting depreciation, interest, and a bad debt amounting to \$1,014.90, it showed a net operating profit of only \$22,526.72. This does not take into consideration other property devoted by this respondent to the public service. The record shows the cost of fuel, labor, and other items of operation increased in 1934 over the prices prevailing in 1933.

Nos. 152 and 154.—The complaints, in No. 152 filed by Arrow, Calmar, Dollar, Grace, Luckenbach, McCormick, Panama Pacific, and Quaker; and in No. 154, filed by American-Hawaiian and Williams, in substance allege that Shepard's rates were made substantially lower than those maintained by complainants for the purpose of securing, in competition with complainants, an undue proportion of the freight available for transportation; that such rates hinder the upbuilding of the trade and the maintenance of proper service as contemplated by law; and that in making such reduced rates and securing cargo on basis thereof, Shepard avails itself unduly of the protection of a stabilized rate structure provided by complainants, all contrary to the true intent of the various shipping acts and the interests of the intercoastal trade and to the general public interest. They request Shepard's tariffs, SB-I No. 1 naming westbound rates and SB-I No. 2 naming eastbound rates, be found unlawful and cancelled, and that for the future the rates and charges filed by said carrier be held to be unduly prejudicial and unreasonable to the extent that they are lower than the rates contemporaneously charged by complainants.

On behalf of American-Hawaiian it was testified its vessels cost \$17,000,000. One of these vessels cleared from New York on September 22, 1934, with 2,465 tons of cargo destined to points on the Pacific Coast after having called at Boston, Mass., and Philadelphia. The gross revenue derived from this sailing was \$39,490.79. On basis of the Shepard rates the gross revenue would have been \$34,669.08, or a difference approximating \$1.95 per ton. During the first six months of 1934 this complainant transported 100,356 payable tons westbound and had an operating profit of \$203,191 before interest, depreciation, income tax, and strike expenses. On basis of the Shep-

ard rates such operating profit would have been only \$7,496.80. Each of the complainants in No. 152 selected a manifest of one of its steamers sailing recently from the Atlantic to the Pacific Coast. These manifests are said to give a fair cross section of complainants' operations. The difference between the revenue obtained and that which the Shepard rates would have yielded, lower in each instance, would have varied between \$1,498.98, in the case of McCormick, and \$7,105.01, in the case of Luckenbach.

It was further stated on behalf of American-Hawaiian and Williams they have decided to reduce their rates to the level of the Shepard rates but that such move being of transcendental importance to all the lines and the future of the trade, they prefer to appeal to the department to prevent the demoralization which inevitably will follow. This seems to be the general attitude of other carriers. When the conference disbanded on July 31, 1934, Nelson, Argonaut, Pacific Coast Direct, and Weyerhaeuser, which did not join in the complaints, attempted to meet the competition of Shepard by filing schedules naming rates the same or lower than those contemporaneously maintained by Shepard. Such proposed schedules were found not justified, *Intercoastal Rates of Nelson Steamship Company, supra.*

No evidence was introduced on behalf of Shepard in No. 152 or No. 154. However, the record makes it clear Shepard has no objection to an increase in the level of its rates provided a corresponding increase is made in those of lines operating a service superior to its own, and that should such lines reduce their rates Shepard feels its own rates should be further reduced so as to maintain the differentials to which it claims itself entitled.

At the time carriers were bound by a conference agreement they could not depart from the conference rates unless unanimous consent was obtained. They were thus prevented from individually meeting the competition of Shepard. The conference agreement has been dissolved and the situation has changed. Shepard has no greater rights than any of its competitors, but it is clear that the rights of Shepard and its competitors must be exercised in such manner as not to result in a violation of law. The law does not interfere with competition between carriers when conducted along lawful lines, but there is a limit when the law will interfere and that is when competition, as is here the case, becomes destructive and wasteful. A modern, efficient, and economical intercoastal service is in the public interest and any carrier offering it is entitled to all the protection of law. If the department allows Shepard or any other carrier not offering that kind of service to set the standard of competition and permits it by means of tariff advantages, such as Shepard claims to itself, to undermine carriers attempting to offer

that kind of service, it would inevitably lead to the gradual but sure destruction of such other carriers, which is inimical to the declared policy of the law.

In section 1, Merchant Marine Act, 1920, after expressing the need of the country for a merchant marine of the best equipped and most suitable types of vessels and the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such merchant marine, Congress enjoined the United States Shipping Board, the functions of which have been taken over by the Department of Commerce under Executive Order No. 6166 of June 10, 1933, in the making of rules and regulations and in the administration of the shipping laws, to keep always in view such purpose and object as the primary end to be obtained. It has been shown hereinbefore that either because of their failure to disclose all the rates and charges for or in connection with transportation or because of vicious rules permeating their tariffs affected respondents are now engaging in intercoastal transportation in violation of express provisions of section 2 of the Intercoastal Shipping Act, 1933. The provisions of the Shipping Act, 1916, also apply to these respondents. It is there provided that it is unlawful for any carrier to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, section 16; that carriers shall establish, observe, and enforce just and reasonable rates, charges, classifications, and tariffs and just and reasonable regulations and practices relating thereto, and that whenever the board finds that any rate, charge, classification, tariff, regulation, or practice demanded, charged, collected, or observed by any such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge or a just and reasonable classification, tariff, regulation, or practice, section 18; and that either upon complaint, or upon its own motion, the board may investigate any violation of that act in such manner and by such means, and make such order as it deems proper, section 22.

The terms "rates", "charges", "tariffs", and "practices" as used in transportation have received judicial interpretation. A rate is the net amount the carrier receives from the shipper and retains, *Chicago & A. Ry. Co. v. United States*, 156 Fed. 558, affirmed *Chicago & A. Ry. Co. v. United States*, 212 U. S. 563, 53 L. ed. 653, 29 Sup. Ct. Rep. 689. Charges are the segregated items of expense which are to be demanded by the carrier for any service in connection with transportation, *Detroit G. H. & M. Ry. Co. v. Interstate Commerce Commission*, 74 Fed. 803, affirmed, *Interstate Commerce Commission v. Detroit G. H. & M. Ry. Co.*, 167 U. S. 633, 42 L. ed. 306, 17 Sup. Ct. Rep. 986. A tariff is a system of rates and charges, *Pacific S. S.*

Co. v. Cackette, 8 F. (2d) 259. Owing to its wide and variable connotations a practice, which unless restricted ordinarily means an often repeated and customary action, is deemed to apply only to acts or things belonging to the same class as those meant by the words of the law that are associated with it, *Baltimore and O. R. Co. v. United States*, 277 U. S. 291, 300, cited in *Missouri Pacific R. Co. v. Norwood*, 283 U. S. 249, 257. In section 18 the term "practices" is associated with various words, including "rates", "charges", and "tariffs." From the foregoing it should be clear that there cannot be a "maximum" tariff any more than there can be a "maximum" practice, as such terms are used in the section under consideration. If a tariff or practice of an intercoastal carrier is found unjust or unreasonable the department may determine, prescribe, or order enforced a tariff or practice that would correct the evil. The only condition imposed by law is that the practice or tariff determined, prescribed, or ordered enforced be just and reasonable. That tariffs are but forms of words and that in the exercise of its powers to administer the shipping acts the department can look beyond the forms to what caused them, and what they are intended to cause and do cause is well established by *Int. Com. Comm. v. Balt. & Ohio R. R.*, 225 U. S. 326, 345.

(b) *Pooling of revenues by carriers and effect thereof on rates*

The agreement governing the United States Intercoastal Conference at the time this investigation was instituted provided, among other things,

23. (a) Effective January 1, 1934, a pool is hereby established to the extent of three per cent of the intercoastal ocean freights, eastbound and westbound, according to the steamer's manifests or bills of lading (excluding arbitraries and accessorial charges) of the several member lines, to be computed on the extended ocean freights, which moneys shall be paid into the Conference by the several members monthly for distribution as below provided; however, that the pool shall not include refrigerator cargo, passenger fares and baggage, passengers' automobiles, or cargo to or from Hawaiian Islands or foreign transshipment cargo handled on through bills of lading or revenue derived from handling mail.

(b) Payments into the Conference on both eastbound and westbound ships shall be made unconditionally on or before the thirtieth day after sailing (January 1, 1934, or later) of each steamer from final port of loading.

(c) Out of the moneys so received by the Conference up to eighty thousand dollars (\$80,000.00) per month there shall be apportioned and paid to each "B" member line a share in accordance with the relationship or proportion which each "B" member line's sailing frequency bears to the "frequency days" of all the "B" member lines added together.

(d) In the event that the pool moneys received by the Conference in any month exceed Eighty thousand dollars (\$80,000.00) then the excess over that sum shall be divided between the "A" line group and the "B" line group on the basis of the total frequency of the two groups so that the "A" lines

shall receive such proportion of such excess as the total frequency days of the several "A" lines added together bears to the total frequency days of both the "A" lines and the "B" lines, and the "B" lines shall receive the balance of such excess. The "B" lines' proportion of such excess shall be divided between the "B" lines and according to frequency on the principle set forth in paragraph (c), and the "A" lines' proportion shall be divided among them equally, share and share alike, subject, however, to the right of any "A" line after three months to require an adjustment of the division within the "A" group.

(e) Thirty (30) days' frequency shall be the lowest frequency to be taken into calculation, but it is a condition, that any line participating in the "B" pool distribution must maintain a minimum of three sailings per quarter (force majeure excepted) to be entitled to participate in the distribution.

(f) Final pool distribution to member lines shall be made on a quarterly basis, but provisional payments to the extent of approximately seventy-five (75) percent will be made on a monthly basis. The amount of moneys payable to the Conference for distribution shall be certified by a sworn statement of an executive officer of each line at the end of each quarter to enable closing of the pool account for such quarter.

Effective March 21, 1934, the conference members increased their freight rates by 3 percent and eliminated the surcharge rule. The conference disbanded on July 31, 1934, and the conference agreement is no longer in force. In the circumstances a further discussion of this subject will accomplish no useful purpose.

(c) Receipt, handling, storing, and delivery of property at terminals within port districts

Requiring every common carrier by water in intercoastal commerce to publish, post, and file schedules showing all the rates, fares, and charges "for or in connection with transportation", stating "separately each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, or charges, or the value of the service rendered to the passenger, consignor, or consignee" is in contemplation of the obligation that rests upon each such carrier serving a point to provide adequate terminal facilities. This obligation is one that may be fulfilled by the carrier itself or through an agency. The record discloses that in some places the terminal facilities are operated by respondents themselves and in others by private organizations, at times shippers, or by common carriers by rail, municipalities, or states. If in connection with intercoastal transportation a terminal or other charge is made, or a privilege or facility is granted or allowed, or a rule or regulation in anywise changes, affects or determines any part or the aggregate of the rates, fares, or charges, or the value of the service to the passenger or shipper, it

must be stated separately in the tariff of the carrier regardless of who makes the charge, grants, or allows the privilege or facility, or applies the rule or regulation. This obligation is not being fully carried out by respondents. While there is no uniformity in the terms used to designate the various terminal services and the terminal practices vary even within the same port district, the situation as to the various respondents is not materially different and one illustration should suffice.

Luckenbach is shown as calling at Boston, Providence, R. I., New York, Philadelphia, Los Angeles, San Francisco, Alameda, Richmond, Oakland, and Stockton, Cal., Portland, Ore. Seattle and Tacoma, Wash. It operates terminal facilities at New York, Philadelphia, Los Angeles, San Francisco, Portland, and Seattle. Its tariffs show the rates for transportation between all these places and certain charges and penalties not here necessary to mention, but they do not show that at these places there are certain charges in connection with transportation, such as wharfage, dockage, storage, handling, and others which the shipper must pay or are absorbed by respondent. Without purporting to mention every instance developed of record, the tariffs of Luckenbach do not show that—

At Boston.—There is a free storage period after which respondent collects a storage charge for account of the owner of the pier or absorbs on shipments held over for movement on one of its vessels; or a wharfage charge, which varies according to the commodity, particular method of delivery to the pier, and point of origin of the shipments; or the amounts of such charges; or that instead of shifting its vessels, respondent absorbs the charge for trucking from Commonwealth Pier to Mystic Pier on shipments destined thereto but unloaded at the first point.

At Providence.—There are storage rules and charges or a wharfage charge, or the amounts of such charges.

At New York.—There are storage charges; or that respondent makes a charge for unloading from its vessels into lighters or for loading from lighters into its vessels, which varies according to the commodity and the manner of packing; or the amounts of such charges.

At Philadelphia.—Respondent makes a charge for loading or unloading rail cars on cargo from or to its vessels, unless the rail rate is less than 9 cents per 100 pounds, in which event these services are performed free of charge; or that it makes a charge on lumber piled on the pier or on lumber loaded from lighters into its vessels; or the amounts of such charges; or the storage rules and charges.

At Los Angeles.—Respondent makes a charge, which varies according to the commodity, for handling shipments between open rail

cars by ship's tackle and its own vessels; or that there is a wharfage charge, which also varies according to the commodity; or a truck tonnage tax; or the amounts of such charges or tax; or the storage rules and charges.

At San Francisco.—There is a charge for loading or unloading rail cars on cargo from or to its vessels; or a charge for handling between ship's hook and point of rest on the dock, which respondent absorbs; or a wharfage charge; or a toll tax; or the amounts of such charges or tax; or that segregation of shipments is performed by it free of charge; or the storage rules and charges.

At Alameda, Richmond, or Oakland.—There is a charge for loading or unloading rail cars on cargo from or to its vessels; or a charge for handling shipments between ship's hook and point of rest on the dock, which respondent absorbs; or a wharfage charge; or a toll charge; or the amounts of such charges; or the storage rules and charges.

At Stockton.—There is a toll tax, or the amount of such tax; or the storage rules and charges.

At Portland.—Respondent makes a charge for loading or unloading rail cars on cargo from or to its vessels; or for unloading from trucks lumber for movement by its vessels; or that it loads lighters from its vessels or loads its vessels from lighters at "half wharfage"; or that there is a wharfage charge; or the amounts of such charges; or the storage rules and charges.

At Seattle.—Respondent makes a charge for loading or unloading rail cars on cargo from or to its vessels; or that there is a charge for handling shipments between ship's hook and point of rest, which it absorbs; or a wharfage charge; or the amounts of such charges; or that it handles free of charge cargo between lighters and its vessels; or that it absorbs certain lighterage charges; or the storage rules and charges.

At Tacoma.—There is a charge for loading or unloading rail cars on cargo from or to its vessels; or a charge for handling shipments between ship's hook and point of rest, which it absorbs; or a wharfage charge; or the amounts of such charges; or the storage rules and charges.

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. Although the record does not contain sufficient information upon which to make findings as to whether or not absorption of charges at some places and not at others are in violation of law, absorption of charges for loading or unloading rail cars or lighters, or for any

service which is not the duty of intercoastal carriers to perform, clearly results in unwarranted dissipation of revenue which is not sanctioned by law.

Persons engaged in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water are subject to the Shipping Act, 1916. Section 16 thereof makes it unlawful for any such person to subject any particular person, which term includes a common carrier by water in intercoastal commerce, or any particular locality, or description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 17 of that act imposes upon such persons the obligation of observing just and reasonable practices relating to or connected with the receiving, handling, storing, or delivering of property. Although such persons are not included in the order instituting this investigation, it is not amiss to mention the fact of record that Cilco Terminal Company, Inc., the only terminal facility at Bridgeport, Conn., is owned by the City Lumber Company, a receiver of lumber at that place. Although the terminal company accepts and handles all commodities, it refuses to accept or handle lumber consigned to the competitors of its parent organization. This results in a violation of law.

(d) Holding out to perform transportation services, or services in connection therewith, by themselves when such services are, in whole or in part, performed by another carrier, and absorptions of the charges of such other carrier.

(e) Performance of transportation services, or services in connection therewith, in an agency or other capacity allegedly to be other than as common carriers by water in intercoastal commerce as such term is defined in the Intercoastal Shipping Act, 1933.

(f) Extension of common-carrier services to additional ports and rates to and from such additional ports.

No. 119

At the time this investigation was instituted it was a notorious practice for respondents, the vessels of which go through the Panama Canal, individually to publish rates, erroneously termed "terminal rates," from or to intercoastal points at which their vessels could not or did not call, for another carrier by water not named in the tariff to perform part of the transportation service, but not involving the haul through the Panama Canal, and for the publishing carrier to absorb the rates and charges of such other carrier on the theory that such other carrier, generally termed an on-carrier, was merely performing an agency service and was not engaging in common-

carrier operations. For instance, Grace had rates between New York and Olympia, Wash., in spite of the fact it did not operate north of San Francisco. It would accept shipments destined to Olympia and transport them to San Francisco where they would be transshipped to any of four available on-carriers for movement to Seattle, where the shipments would again be transshipped to any of four other available on-carriers for movement to final destination. The absorption of the rates and charges of the on-carriers was accomplished by means of tariff publications, of which Rule 4 in Agent R. C. Thackara's tariff SB-I No. 5, still in effect, is illustrative. Under this rule the publishing carrier reserves the right—

- (1) to call direct at any of the ports on its route * * * or
- (2) to move via water carrier or water carriers cargo offered at such ports to its own port of call.
- (3) If the carrier elects to move cargo as prescribed in (2) above, the carrier will * * * assume the transfer charges on such cargo from the originating port to the port at which the cargo is loaded into intercoastal vessels.

Such movements were covered by through bills of lading showing only the name of the carrier publishing the rate. Recently under concurrence the on-carriers generally became parties to the tariffs and their names are now shown in the routing sheets.

Numerous other instances were developed of record in which the on-carriers, particularly those operating on the Atlantic Coast, participate in intercoastal transportation on basis of rates and charges which they collect from shippers, but which the on-carriers have failed to file with the department. For instance, each respondent was requested to list the names of all carriers by water with which it interchanges freight in intercoastal transportation, showing (a) reasons for each interchange, (b) points at which interchange is made, (c) each service necessary to effect interchange, (d) party performing each such service, (e) charge and tariff authority for each service, (f) absorptions made by respondent, and (g) tariff authority for each such absorption. The reply of American-Hawaiian, typical of those received of record, was as follows:

ATLANTIC COAST

I. BOSTON, MASS.:

(a) Requested by shipper and/or consignee:
Eastern Steamship Lines, Inc.

(b) We interchange traffic with this line at Boston, Mass.

(c) We employ truckman to take east-bound cargo from place of rest on our pier to "Eastern's" pier, and west-bound cargo from "Eastern's" pier to place of rest on our pier;

(d) Per "(c)" above;

1 U. S. S. B. B.

I. BOSTON, MASS.—Continued.

Eastern Steamship Lines, Inc.—Continued.

(e) Our tariffs provide that rates named therein do not include transfer charges in instances like this; therefore the truckman's charge of 8 cents per 100 pounds is billed against the consignee in all instances;

(f) We make no absorptions under this interchange;

(g) None.

II. NEW YORK, N. Y.:

(a) Requested by shipper and/or consignee:

Group 1—(West-bound)

Hudson River Steamboat Co.	Middlesex Transportation Co.
Hudson River Navigation Co.	Central Vermont Railway.
Central Hudson Steamboat Co.	Colonial Line.
Starin New Haven Line.	N. Y. & N. J. Steamboat Co.

These lines deliver carloads and less carloads, respectively by lighters and trucks in their employ, to place of rest on our dock; they make no charge as their rates include this delivery service;

Group 2—(West-bound)

Catskill Evening Line.	Eastern Steamship Lines, Inc.
New England Steamship Company.	

These lines deliver carloads, by lighters in their employ, to place of rest on our dock and make no charge as their carload rates include this delivery service. Less carload shipments are picked up, by our truckman, at the piers of these lines and delivered to place of rest on our dock, for which service his charge of 12 cents per 100 pounds is billed against consignee;

Group 3—(West-bound)

Thames River Line.	Newark Terminal & Transportation Co.
Ben Franklin Transportation Co.	

These lines deliver carloads, by trucks or lighters in their employ, and less carloads, by trucks in their employ, to place of rest on our dock, as their rates include this delivery service, and no charge is made;

Group 4—(West-bound)

Seaboard Great Lakes Corp.	National Motorship Corporation.
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These lines deliver carloads (less carloads not involved), by lighters in their employ, to place of rest on our dock, as their rates include this delivery service, and no charge is made. The Seaboard Great Lakes Corp. occasionally calls their motorships direct at our pier to deliver cargo; in those instances their rates do not include the cost of unloading the motorships, which service our stevedore performs and the shipper or consignee is billed for that expense;

Group 5—(West-bound)

N. Y. & Hastings Steamboat Co.

This line delivers carloads (less carloads not involved) by lighters in their employ, to place of rest on our dock, as their rates include that delivery service, and no charge is made;

Group 6—(West-bound)

Old Colony Forwarding Co.

This line delivers carloads and less carloads by trucks in their employ to place of rest on our dock, as their rates include that delivery service, and no charge is made;

* * * * *

Group 1—(East-bound)

Hudson River Steamboat Co.	Starin New Haven Line
Catskill Evening Line	Middlesex Transportation Co.
Central Hudson Steamboat Co.	Hudson River Navigation Co.
Thames River Line	Newark Terminal & Transportation Co.

These lines pick up carloads and less carloads, by trucks and lighters in their employ, at our dock and make no charge for transferring them to their own piers as their rates include this pick-up service.

Group 2—(East-bound)

Eastern Steamship Lines, Inc.	N. Y. & N. J. Steamboat Co.
New England Steamship Co.	Seaboard Great Lakes Corp.
Central Vermont Railway	W. E. Hedger Transportation Co.
Ben Franklin Transportation Co.	National Motorship Corp.
Colonial Line	N. Y. & Hastings Steamboat Co.

These lines pick up carloads, by lighters in their employ, at our dock and make no charge for transferring them to their own piers as their rates include this pick-up service. Our truckman transfers less carload shipments from our pier to these connecting carriers' piers and the expense (12 cents per 100 pounds) for that service is billed against the consignee.

(f) No absorptions involved.

(g) None.

III. PHILADELPHIA, PA.:

(a) Requested by shippers and/or consignees:

Philadelphia & Norfolk Steamship Company.
 Merchants & Miners Transportation Company.
 Wilson Line, Inc.
 Baltimore & Carolina Line (A. H. Bull & Co.).
 *Ericsson Line, Inc. (A. H. Bull & Co.).

On both carload and less carload shipments these lines take delivery at our pier and deliver to our pier, by trucks in their employ, and as their rates include this pick-up and delivery service no charge is made;

(f) No absorptions involved.

(g) None.

*Ericsson Line also calls their boat at our pier in lieu of the pick-up and delivery services mentioned above.

IV. NORFOLK, VA.:

(a) Requested by shipper and/or consignee;

Buxton Lines, Inc.
 Norfolk, Baltimore and Carolina Line.

These lines call their boats at our pier to take delivery of carloads and less carloads from place of rest on our dock. Their rates in-

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VI. NORFOLK, Va.—Continued.

Buxton Lines, Inc., and Norfolk, Baltimore and Carolina Line—Continued. clude this pick-up service and no charge is made; Norfolk and Washington, D. C. Steamboat Company.

This line picks up carloads and less carloads, by trucks in their employ, from place of rest on our dock and as their rates include this pick-up service no charge is made.

(f) No absorptions involved.

(g) None.

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, *United States v. Illinois Central R. Co.*, 230 Fed. 940; *Baltimore & O. S. W. R. Co. v. Settle*, 260 U. S. 166.

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. There is no provision in the law for the establishment of through rates by absorbing the terminal rates of another carrier for the purpose of establishing through rates for a through route composed of two or more carriers over which route no joint through rate has been fixed by agreement.

A connecting carrier may not discriminate against another connection when conditions are alike. Otherwise it would coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business which under freedom of selection

by the public would be given to it; and it is a violation of law for an on-carrier to charge more on traffic interchanged with one connection than with another when the service rendered is substantially the same.

From the reply of American-Hawaiian it is apparent that the carriers therein named, and others shown of record as performing similar services, are common carriers by water participating in intercoastal transportation. The files of the department do not indicate any such carrier has complied with the requirements of section 2 of the Intercoastal Shipping Act, 1933.

There has been considerable confusion regarding that portion of section 2 which, after requiring carriers participating in intercoastal transportation to publish, post, and file their rates and charges for or in connection with such transportation, states as follows:

Such carriers in establishing and fixing rates, fares, or charges may make equal rates, fares, or charges for similar service between all ports of origin and all ports of destination, and it shall be unlawful for any such carrier, either directly or indirectly, through the medium of any agreement, conference, association, understanding, or otherwise, to prevent or attempt to prevent any such carrier from extending service to any publicly owned terminal located on any improvement project authorized by the Congress at the same rates which it charges at its nearest regular port of call.

The confusion is due largely to the failure of carriers to understand what a terminal rate is, and the manner of extending the application of such rates to points at which, because of navigation conditions, their vessels cannot call. It has been shown hereinbefore that in the past respondents the vessels of which go through the Panama Canal on their own responsibility have published rates from or to intercoastal points at which their vessels could not or did not call, treating as their agent the on-carrier necessary to perform the entire haul. Such rates, even to places other than a publicly owned terminal on an improvement project authorized by Congress, have generally become effective upon notice to the department under the mistaken belief they came under that provision of section 2 which provides that schedules or changes providing for extension of actual service to additional ports at rates already in effect for similar service at the nearest port of call to said additional ports shall become effective immediately upon notice to the department. An illustration of this entire situation is presented by No. 119, which will now be disposed of.

No. 119.—The complaint, filed by owners and operators of terminals at Oakland, Alameda, and Richmond, as amended, in essence alleges that the maintenance by Shepard and Calmar of rates and charges for intercoastal transportation from and to Sacramento, Cal., equal to those contemporaneously maintained by them for inter-

coastal transportation from and to their terminals gives an undue and unreasonable preference and advantage to Sacramento and shippers located there and an undue and unreasonable prejudice and disadvantage to complainants and persons shipping or traffic shipped via their terminals, that such rates and charges are unreasonable, and that the tariffs containing them were published and filed with the department on less than 30 days' notice as required by section 2 of the Intercoastal Shipping Act, 1933, and are illegal and in violation of said act.

Sacramento, the center of an important agricultural region, is on the Sacramento River approximately 92 nautical miles from San Francisco. Fruit canning and preserving and rice milling are its principal industries. Sacramento is also an important wholesale center. In 1933 approximately 6,000 tons moved monthly from and to this point in intercoastal commerce. It is said that in addition approximately 2,000 tons moved monthly to San Francisco and Oakland for subsequent movement in either intercoastal or foreign commerce. Large amounts have been spent by the city in providing terminal facilities and by the Federal Government in improving the river channel. In addition to the municipal wharf, which is said to be capable of accommodating large vessels, there are privately owned and operated wharves at Sacramento. Not long ago a vessel of one of the respondents called at that place, but from the circumstances attending that voyage, fully described of record, it is clear that navigation conditions are such as to make it hazardous and expensive for the vessels of respondents to call there, even if they can do so lightly loaded and when the river is at its greatest depth. It cannot be said that Sacramento is a "deep-water" port. No other vessel of respondents has ever called at that place.

Sacramento was shown as a terminal point in the east-bound and west-bound tariffs filed by Calmar and Shepard following the enactment of the Intercoastal Shipping Act, 1933, in spite of the fact that no direct service was maintained by them from or to that point. The west-bound tariff filed by Calmar also showed an arbitrary to be added to the San Francisco rate on traffic moving in conjunction with California Transportation Company, Fay Transportation Company, or Sacramento Navigation Company. Its east-bound tariff was amended on May 10 and September 27, 1934, by showing for the first time Sacramento Navigation Company and Larkin Transportation Company, respectively, as participating in through routes and joint rates from Sacramento. On August 1, 1933, the west-bound tariff filed by Shepard was amended by showing Sacramento Navigation Company and California Transportation Company as parties to the tariff, but the tariff failed to show any specific routing. However,

effective July 5, 1934, the tariff was further amended by showing routings in conjunction with these two carriers with alternative application of the rates direct via Shepard. Similar changes were made on its east-bound tariff effective July 26, 1934. As neither the vessels of Calmar nor Shepard, except as noted, call at Sacramento, these respondents, under tariff publication, in essence similar to that which has been shown hereinbefore, absorbed the rates and charges of the on-carriers on all traffic moving on basis of the rates intended for local application, erroneously considered by them to be their "terminal rates." This situation existed until the tariffs were amended by showing the on-carriers as parties to the through routes and joint rates. The situation with respect of the rates maintained by Calmar and Shepard from and to complainants' terminals is not materially different from that described, except that no arbitraries are added to the rates of Calmar on traffic moving west-bound in conjunction with on-carriers from San Francisco to such terminals, and except also that from Shepard's east-bound tariff it is not clear the rates therein named apply in conjunction with any on-carrier from such points.

Complainants are in competition with each other in the handling of cargo originating at or destined to central California territory, including the Sacramento district. Prior to the establishment of the rates under consideration, cargo originating in that district for movement to intercoastal destinations would move by barge, rail, or truck to complainants' terminals, where it would be picked up by an intercoastal carrier, or would be barged from their terminals to San Francisco for movement beyond by an intercoastal carrier. This operation was reversed on intercoastal cargo destined to the Sacramento district. The shipper would pay the cost of such additional transportation, except for barging between complainants' terminals and San Francisco, the cost of which was absorbed by the intercoastal carrier. Complainants would collect their charges for handling and other services at their terminals from the shipper or the intercoastal carrier. As the Shepard tariffs name rates from or to San Francisco equal to those from or to complainants' terminals, which is also true of the Calmar tariffs, except as has been indicated, intercoastal cargo moving via Calmar or Shepard is now barged direct between Sacramento and San Francisco, depriving complainants of the revenue for services formerly performed by them in connection therewith. Complainants fear similar extension of rates on cargo from or to other shallow-water points on the Sacramento River and San Francisco Bay, which is now handled through their terminals, will deprive them of the revenue they now receive on such other cargo.

Oakland, Alameda, and Richmond are on the east side of the Bay, opposite San Francisco, approximately 7 miles therefrom. Intercoastal carriers, including Calmar and Shepard, generally call there. For their convenience at times they prefer to load or unload their vessels at San Francisco, in which event cargo moving from or to those points is barged to or from San Francisco, as the case may be, and they absorb the charges for that service. Complainant's urge that shippers at shallow-water points, such as Sacramento, should not be placed on a rate parity with shippers at places where intercoastal carriers call direct. To do this they state deprives shippers at deep-water points of the natural advantages of their location resulting in undue and unreasonable preference and advantage to shippers at shallow-water points and undue and unreasonable prejudice and disadvantage to shippers at deep-water points. However, as has been fully explained hereinbefore, it is the duty of carriers to establish rates between points they serve. For this purpose the law does not distinguish points on shallow water from points on deep water, and the amount of the rate cannot be measured by the depth of the water. Not all preferences and advantages are condemned by law, but only those that are undue or unreasonable. The record does not show that the preference or advantage to the Sacramento shippers, or the prejudice and disadvantage to shippers using complainants' terminals, if any, resulting from the rates under consideration is of the character condemned by law. Undoubtedly an effect of the rates in issue was to deprive complainants of revenue they formerly received from the handling of the traffic involved at their terminals, but this alone does not constitute a violation of the law the department enforces. As to the allegation that the rates in issue are unreasonable, it should be sufficient to state that the rates of intercoastal carriers, including Calmar and Shepard, are grouped in such manner that generally the same rate, whether a terminal or joint rate, applies between any point on the Atlantic Coast and any point on the Pacific Coast.

The requirement of prior notice as regards publication of reductions in rates appears for the first time in the Intercoastal Shipping Act, 1933. Prior to that act no obligation rested upon carriers to give public notice of such reductions. The law only required the filing of maximum rates, fares, and charges and prohibited carriers from demanding, charging, or collecting a greater compensation, except with the approval of the board and with ten days' public notice, which requirement the board had the power to waive for good cause shown. The Intercoastal Shipping Act, 1933, was approved March 3, 1933. From and after ninety days following the enactment thereof, all persons were prohibited from engaging in trans-

portation as common carriers by water in intercoastal commerce unless and until schedules as provided by section 2 thereof are duly and properly filed and posted. The tariffs containing the rates under consideration were filed within the time limit prescribed by law, and the rates and charges therein contained are the only rates and charges which these two respondents may legally charge or collect. The act of 1933 prohibits carriers from changing the rates, fares, or charges which have been filed with the department, except by the publication, filing, and posting of a new schedule or schedules which shall become effective not earlier than thirty days after date of filing thereof with the department, with the proviso that schedules or changes which provide for extension of actual service to additional ports at rates of the carrier already in effect for similar service at the nearest port of call to said additional port shall become effective immediately upon notice to the department. Complainants contend the publication of "terminal rates" for application at a shallow water point is unauthorized and unlawful and the provision for immediate effectiveness of tariffs upon notice to the department can have no application in this instance. But, as has been stated, the law draws no distinction between shallow water points and deep water points. Furthermore the real rates involved, or the rates applicable in conjunction with on-carriers, are not terminal rates.

Complainants further contend that jurisdiction of inland water carriers has not been conferred upon the department and that tariffs naming joint rates with such carriers are illegal upon their face. The term "common carrier by water in intercoastal commerce" for the purposes of the Intercoastal Shipping Act, 1933, includes 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. The on-carriers in this instance are common carriers by water engaged for hire in the transportation of property. It is true their activities are limited to the Sacramento River and San Francisco Bay, but, as has been pointed out, by transporting in part shipments the undoubted character of which is intercoastal they subject themselves to the act.

One other contention of complainants is that, irrespective of whether the on-carriers in this instance are subject to the act, joint rates with such carriers are unauthorized and illegal. In support of this contention they mention the fact that no reference is made in either the Intercoastal Shipping Act, 1933, or in the Shipping Act, 1916, to joint rates, but merely to through routes "contemplating, of course, a combination of local rates." This contention is untenable. A "through route" is an arrangement, express or implied, between

connecting carriers 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" is not necessarily a "joint rate." It may be merely an aggregation of separate rates fixed independently by the several carriers forming the "through rate", as where the "through rate" is "the sum of the locals" of the several connecting lines or is the sum of lower rates otherwise separately established by them for through transportation. Ordinarily "through rates" lower than "the sum of the locals" are "joint rates", *St. Louis S. W. Ry. Co. v. United States*, 245 U. S. 136, 139, affirming 234 Fed. 668.

(g) *Removal, in whole or in part, of differences in the aggregate of rail and water rates and other charges through different ports*

The agreement governing the United States Intercoastal Conference at the time this investigation was instituted provided in part—

9. (a) Port equalization will be permitted all lines on westbound tariff items covered by the so-called "Port Equalization List", which shall be in Tariff referred to in paragraph (8). Port equalization is not to be applied unless the rates from point of origin into the port of exit equals or exceeds nine cents (9¢) per 100 pounds and is not to exceed the actual difference in like kinds of transportation from the point of origin to the port of exit subject to a maximum equalization of three cents (3¢) per 100 pounds, except in the application of this rule to Chester, Pennsylvania, as below indicated. (See "b.") Equalization is not permitted of any difference in the charges assessed or claimed, for delivery of freight by private, public, or Government-owned dray, truck, or similar conveyance; nor is equalization permitted to any extent of charges assessed or claimed for transportation of vehicles or parts thereof, moving under their own power or through the medium of some other form of transportation on the public highways. Said list may be amended from time to time by unanimous vote.

(b) In respect to Chester, Pennsylvania, it is permitted to equalize carload rail traffic at Philadelphia as an exception to the nine-cent limit rule and exceeding the three-cent maximum, aforesaid. (See "a.")

(c) No port equalization shall be applied by any line within the list of handicap items, with the following specific exceptions:

(1) Dollar Line—up to 250 net tons of iron or steel, handicap or nonhandicap items per steamer from New York on "A" rate basis.

(2) Panama Pacific Line—up to 250 net tons of iron or steel, handicap or nonhandicap items, per steamer from New York on "A" rate basis.

(3) Grace Line—up to 250 net tons iron or steel out of handicap list per steamer from Philadelphia on "A" rate basis.

(4) Specific equalization privileges on the quantities of iron and steel per steamer mentioned in Nos. 1-3 above are noncumulative, but the measure of port equalization allowed in these specific privileges on iron and steel mentioned in Nos. 1 and 2 above may be the actual difference between the rail rates from point of origin to port of exit, subject to a maximum of six cents (6¢) per 100 pounds, without prejudice to section "a" foregoing.

(5) All lines reserve the right to fully equalize on the Pacific coast with lines engaged in intercoastal traffic who also operate Pacific coastwise services, and with intercoastal lines engaged in Pacific coastwise service on traffic destined beyond.

(d) No carrier shall apply port equalization in connection with traffic originating locally at another port from which service is maintained by any other Conference line, with the exception of Chester, Pennsylvania, as above provided for. (See "b".)

(e) The right of equalization shall not be used to offset any disabilities existing between carriers in the same port, except in respect of receiving and delivering stations agreed on in New York Harbor, (See Paragraph 10), and no equalization shall be made in respect of transfer, cartage, lighterage, wharfage, or unloading charges, in the same port, except as provided by tariff rules and regulations.

(f) There shall be no port equalization on east-bound cargo.

Rule 9 of Agent Thackara's tariff SB-I No. 4, appearing hereinbefore, was adopted in furtherance of this provision of the conference agreement. Calmar and Shepard publish similar rules in their tariffs. All such rules have here been condemned for reasons already stated. Their unlawfulness has also been made clear by the department in *Intercoastal Rates of Nelson Steamship Company, supra*, involving a similar port equalization rule. It should suffice to repeat what was there stated, that the inclusion of any provision in a tariff which makes the amount of the charge dependent upon the measure of a rate published in tariffs of some other carrier, cannot too strongly be condemned. In view of that decision and of the fact that the conference no longer exists, a discussion of the merits of shrinking the intercoastal rates for the purpose of equalizing rail or truck rates and charges on cargo moving in intercoastal commerce through different ports will only be of academic value, and this subject merits no further consideration.

(h) Performance of transportation services, or services in connection therewith, without proper tariff authority.

(i) Nonperformance of services which by proper tariff provisions or otherwise they hold themselves out to perform.

(j) Observance of the rates, classifications, rules, and regulations contained in tariffs properly filed with the Department.

No. 114

These three subjects and case are related and will be disposed of together. It cannot too strongly be stressed that every transportation service, or service in connection therewith, must be clearly shown in the tariff before a carrier may lawfully engage therein, and this applies with equal force to services for which a charge is made as well as to services for which no charge is made; and that failure to properly publish, file, and post all the rates and charges for or in con-

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nection with transportation and the rules which in anywise change, affect, or determine any part of such rates or charges is as serious a violation of law as the failure to observe strictly such rates and charges after they have been properly published and filed. A penalty is prescribed by law as heavy for one violation as for the other. This advertence is necessary in view of the fact that the record shows some respondents consider themselves at liberty to act most freely when no rate, charge, or rule is contained in the tariff. An outstanding example of this is presented by Luckenbach and American-Hawaiian, which the record shows handle the greater number of inter-coastal shipments moving to or from Philadelphia. Both respondents operate terminal facilities at that place. Without any provision in the tariff, originally they would allow five days free for the storage of property. To meet the competition of each other, this free storage period has been increased from time to time until at present it ranges from five to at least ninety days. The time allowed is the subject of trading with each shipper. The storage situation at Portland is not dissimilar from that at Philadelphia. Another outstanding example is presented by the fact that on-carriers operating in the Puget Sound not infrequently consolidate less-than-carload shipments in order to insure the application of carload rates. In doing this an additional haul over their lines is necessary. Although the tariffs are silent, apparently this service and haul are performed without charge. A witness on behalf of Puget Sound Navigation Company and Border Line Transportation Company, carriers by water operating in Puget Sound, testified in part as follows:

We usually receive an order from the broker, canner, or whoever it might be, that is making the shipment, telling us there will be a hundred cases at Pier 40 at Seattle, which is the salmon terminal; there will be 500 cases at Bellingham. We will pick the hundred cases up from Pier 40 and take it to Bellingham and consolidate them and bring the 600 back for reshipment intercoastally at Seattle, and secure our revenue on the 600 cases. In other words, frankly, we take a hundred cases for a joy ride. * * *

Q. What makes it necessary to take this hundred cases out for a joy ride, as you call it?

A. To make the consolidation. In other words, we have a steamer loading at a terminal in Seattle that is not the salmon terminal. We could pick up the 500 cases from Bellingham and deliver them to that terminal for the steamship line. However, we have an eight-cent rate, for instance, from Bellingham, on carload quantities and a 10-cent rate on less than carload quantities. Therefore, the 500 cases might not make the carload and would be penalized. Not only that, the shipper would have to arrange the consolidation with the hundred cases after they have arrived in Seattle. Now, we can handle it on our northbound trip without any additional expense, other than probably 15 cents worth of fuel oil, and we can handle it on our inbound trip the same way. However, I say a hundred cases. It might be the exact reverse. It could be worked. I don't think it is; but the shipper might have 500 cases

in Seattle and 100 cases in Bellingham, and in order to get our eight cents from Bellingham to Seattle, we would haul the 500 equally for a sight-seeing trip, to connect with the hundred.

In addition to the specific instances hereinbefore shown where respondents fail to adhere to the published rates, charges and rules, the record shows that even though respondents the vessels of which go through the Panama Canal publish "heavy lift" and "segregation" charges in their tariffs, these services are often rendered by them and the shipper is never billed therefor. These respondents publish carload and less-than-carload rates. However, some of them consolidate less-than-carload shipments of some shippers and make up what is known as pool cars, which are split to effect delivery. This is an unlawful device for the purpose of defeating the less-than-carload rate, not only without proper tariff rate or rule but repugnant to a rule to the contrary contained in their own tariffs.

It should be clearly understood that respondents may not legally absorb charges of any character whatsoever, or perform any service of any nature, free of charge or otherwise, for or in connection with intercoastal transportation, unless and until proper provisions have been made in the tariff.

No. 114.—The complaint in this case, filed by Luckenbach, alleges that Calmar's tariffs SB-I Nos. 1 and 2 contain class and commodity rates and rules and regulations for the intercoastal transportation of property between all ports on the Gulf of Mexico from Tampa to Corpus Christi, both inclusive, and ports on the Pacific Coast; that Calmar does not now nor has it since March 3, 1933, operated any steamships between such ports; that the Intercoastal Shipping Act, 1933, requires the filing only of tariffs naming rates, charges, rules, and regulations between points as to which service is maintained; and that, therefore, the filing of such tariffs was in violation of law. The prayer is that respondent be required to amend its tariffs and eliminate therefrom all rates, rules, and regulations for the transportation of property between Gulf and Pacific Coast ports.

The tariffs in question were published, effective June 1, 1933, principally to enable respondent to place in service vessels laid up on the Pacific Coast, particularly in the transportation of grain to points on the Gulf of Mexico if a favorable opportunity presented itself. The record does not disclose that Calmar has ever maintained service between points on the Gulf of Mexico and Pacific Coast.

Rule 3 (b) in Calmar's tariff SB-I No. 1 is as follows:

Except as otherwise provided for in this tariff, rates named in this tariff shall apply on cargo loaded on any vessel scheduled by Calmar Steamship Corporation for direct call at ports * * * the Gulf of Mexico from Tampa.

Florida, to Corpus Christi, Texas, both inclusive, and/or United States waters adjacent or tributary thereto, as named on Page No. 7 of this tariff, via Panama Canal, to all safe port or ports at which such Calmar Steamship Corporation's vessel is scheduled to call direct to discharge cargo on the Pacific Coast of the United States * * * as named on Page No. 8 of this tariff, or via the carriers and routes specified on Pages Nos. 8 and 9 of this tariff.

Page 7 of the tariff names, among others, the ports on the Gulf of Mexico. A similar rule is contained in Calmar's tariff SB-I No. 2, applicable on east-bound traffic. From these rules it is impossible to state the circumstances under which respondent would schedule its vessels from or to points on the Gulf. The rates, charges, rules, and regulations which every common carrier by water in intercoastal commerce is required to file and post are those "between intercoastal points on its own route; and, * * * between intercoastal points on its own route and points on the route of any other carrier by water." Calmar is not a common carrier by water engaged in intercoastal transportation from and to Gulf ports. Such ports are not on its own route; nor has it established through routes for intercoastal transportation with any other carrier by water from and to such ports. The filing of such rates, charges, rules, and regulations in issue are not those contemplated by the act and respondent should be required to cancel them.

As has been pointed out, "A" carriers formerly members of the United States Intercoastal Conference obligated themselves not to participate in intercoastal transportation from or to points south of Philadelphia. However, they are parties to Agent Thackara's tariffs which published, without routing restrictions, rates and charges from and to such points. The record shows they are not engaged in such transportation, and each such carrier should be required to cancel the rates and charges between points not on its route or on the route of any other carrier by water with which it has not established through routes.

(k) Performance of transportation services, or services in connection therewith; under private contracts with shippers

No. 121

The record does not show carriers formerly members of the United States Intercoastal Conference maintain contracts with shippers in respect of their rates. The contract rate system was adopted by members of the Gulf conference, Calmar and Shepard prior to the passage of the Intercoastal Shipping Act, 1933, when intercoastal carriers were only required to file their maximum rates and the rates charged the shippers, which frequently changed, were not the

same as the published rates. Such practice only prevails in respect of west-bound rates. Members of the Gulf conference publish what are termed "tariff rates" and "contract rates." As both rates are published in the same tariff, these terms are misleading. The contract rate invariably is lower than the noncontract rate. At the time of hearing there was no uniformity in the difference between such rates. The applicable tariff has been amended, and at present the contract rates are uniformly 10 cents per 100 pounds, or \$2 per ton, less than the noncontract rates. Westbound traffic from the Gulf moves under through all-water rates with barge lines, rail-ocean rates, rail-barge-ocean rates, and port-to-port or terminal rates. Contract rates are contained only in the port-to-port tariff, SB-I No. 2, filed by Agent C. Y. Roberts on behalf of Gulf Pacific, Gulf Pacific Mail and Luckenbach Gulf, and only on commodities moving with regularity and in large volume. It is estimated that from 65 to 70 percent of such westbound tonnage moves on basis of contract rates.

In addition to the contract rate the tariff contains the form of the contract, which in part reads as follows:

1. THE SHIPPER, * * * agrees to ship by steamers of the Gulf Intercoastal Conference lines, * * * all of the water-borne shipments, which the SHIPPER shall make between the date hereof and -----, inclusive, * * * of the commodities hereinafter described, quantities being estimated at approximately ----- carloads of ----- net tons.

The shipments contemplated in this clause shall include not only any such shipments made directly by the SHIPPER and in its name, but also any such shipments, however, and by whomsoever made, if for the benefit and on behalf of the SHIPPER * * *

4. If the SHIPPER shall make any shipments in violation hereof, this agreement shall immediately become null and void as to all future shipments, and thereupon the SHIPPER shall be liable to the transporting CARRIERS for payment of additional freight on all commodities theretofore shipped with such CARRIERS since the execution of this agreement, in the amount of the difference between the tariff contract rate or rates and the tariff noncontract rate or rates of the transporting carriers in force on such commodities at the time of such shipments.

6. * * *

For and on behalf of the CARRIERS:

GULF PACIFIC LINE

GULF PACIFIC MAIL LINE, LTD.

LUCKENBACH GULF STEAMSHIP COMPANY, INC.

By GULF INTERCOASTAL CONFERENCE

By -----

The contracts, executed generally for 6 months or one year, are renewed upon expiration. The tariff shows the present contract rates and contract items to expire June 30, 1935.

An underlying purpose of the Shipping Act, 1916, is to prevent every form of favoritism based upon the relations of the shipper with
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the carrier as a customer and to place all shippers, the large and small, the steady and occasional, upon a plane of equality in the right to service. For this reason that act condemns and makes unlawful every regulation, device, or subterfuge which undertakes to give to anyone an advantage based upon conditions other than those inhering in the transportation itself and alone. Contracts of the character in question do not constitute a transportation condition as to warrant a difference in transportation rates. Furthermore carriers are not justified in attempting to restrict traffic to move over their lines. As stated in *Menacho v. Ward*, 27 Fed. 529, involving a substantially similar situation, cited in *Eden Mining Co. v. Bluefields Fruit & S. S. Co.*, 1 U. S. S. B. 41—

The vice of discrimination here is that it is calculated to coerce all those who have occasion to employ common carriers * * * from employing such agencies as may offer. * * * If it is tolerated it will result practically in giving the defendants a monopoly of the carrying trade between these places. Manifestly it is enforced by the defendants in order to discourage all others from attempting to serve the public as carriers between these places. Such discrimination is not only unreasonable, but is odious.

It is said the contract rate system was adopted to obtain some degree of stability in the rates. Undoubtedly this was one of its effects, at least as to the rates on shipments of contracting shippers, but another effect of this practice is to exclude other carriers as may offer from participating in the transportation of the contracted tonnage. In the *Eden Mining* case it was held that the exaction of higher rates from complainants than from shippers who had agreed to give the respondent their exclusive patronage subjected complainants to undue and unreasonable prejudice and disadvantage, and constituted unjust discrimination between shippers. It is true only one carrier was there involved, but to permit the members of the Gulf conference to publish and charge rates depending upon the execution of exclusive patronage contracts would be permitting them to do collectively what carriers individually are prohibited from doing. Two carriers were involved in the *Menacho* case and in principle the situation as to the Gulf carriers cannot be distinguished from the one there involved.

No. 121.—The complaint in this case was filed December 12, 1933, by carriers then members of the United States Intercoastal Conference excepting Nelson. It alleges, in substance, that complainants and respondent, Calmar, are in competition with each other in the intercoastal trade; that respondent has entered into contracts with certain shippers for intercoastal transportation of all shipments for periods extending to three, and in some instances, to five years, at rates different from, and which are or may be lower than, the rates collected by respondent from other shippers who do not enter into

such contracts; that by means of such contracts shippers are required to patronize respondent to the exclusion of complainants or other competing carriers; that said contracts are without lawful consideration; that respondent has not included in its tariff, as required by the Intercoastal Shipping Act, 1933, the rates and terms of said contracts; that said contract rate system constitutes unjust discrimination between shippers and creates undue and unreasonable prejudice and disadvantage both as to complainants and shippers in violation of sections 14, 16, and 18 of the Shipping Act, 1916. It prays an order be made terminating and canceling said contracts and requiring respondent to cease and desist from the aforesaid violations of the shipping acts.

The form of the contract is, in part, as follows:

1. SHIPPER agrees to ship or cause to be shipped, and CARRIER agrees to carry, * * *, subject to CARRIER'S right to fix the maximum quantity of SHIPPER'S cargo to be carried on any vessel, the waterborne shipments of the commodities as described below which SHIPPER and its Subsidiary Companies, or Agents, or affiliations shall make or control between ----- 193-- and -----, 193--, inclusive, * * *

3. Quantities to move under this agreement during the time it is in force shall be as stated in Paragraph No. 6, with a total minimum of ----- carloads, or ----- net tons, and a total maximum of ----- carloads, or ----- net tons. CARRIER shall not be obligated to carry more than ----- of the maximum quantity stated in this paragraph in any one contract year during the term of this agreement.

4. If the SHIPPER shall fail to tender any shipments to CARRIER in any contract year during the term of this agreement, or shall fail in the performance of any of the obligations resting on it under this agreement, CARRIER shall have the option of cancelling this agreement by written notice mailed to SHIPPER.

5. CARRIER agrees to keep SHIPPER advised of its proposed sailings and arrivals, and SHIPPER agrees to use its best efforts to tender its cargo to CARRIER in accordance with such sailings and arrivals.

In bona fide cases where the proposed sailings and arrivals of CARRIER'S vessels will not permit SHIPPER to effect the deliveries required by it, SHIPPER shall have the privilege of forwarding such cargo via other lines, provided (1) SHIPPER in every such instance shall have given reasonable written notice to CARRIER of its intention to make such shipment via other lines, stating the reason therefor and the line or lines via which SHIPPER proposes to move such cargo; and (2) CARRIER shall then fail to rearrange its sailings to meet such delivery requirements. The amount of cargo shipped by SHIPPER via other lines under the above circumstances shall, at SHIPPER'S option, to that extent reduce the amount of cargo required to be tendered by SHIPPER to CARRIER under this agreement, but CARRIER shall not be liable to SHIPPER for any excess rate paid by SHIPPER to other line or lines, or for any other expense incurred by SHIPPER in shipping cargo by other line or lines.

6. The shipments covered by this agreement are listed below in this paragraph, and shall be classified in accordance with the description in, and shall be carried subject to the rates, rules, regulations, and conditions of, CALMAR STEAMSHIP CORPORATION Westbound Class and Commodity Freight Tariff No. 1, SB-I No. 1, revisions or reissues thereof, but the rate and carload minimum

weight for each commodity herein shall not in any event exceed the rate and carload minimum weight set forth in this paragraph.

Item no.	Commodity	Maximum rate in cents per 100 pounds		Carload minimum weight	Quantity to be shipped under this agreement			
		Carload	Less carload		Minimum		Maximum	
					Carloads	Net tons	Carloads	Net tons

Unlike carriers members of the Gulf conference, Calmar does not publish the terms of the agreement in its tariff. Although the evidence does not support the allegation that Calmar's contract rates are different from or lower than those charged on similar transportation to other shippers, or that the contract rates are not contained in the tariff, it shows some contracts were executed or amended about the date the Intercoastal Shipping Act, 1933, became effective, to run for a period of three or five years thereafter. No new contracts have been executed since July 29, 1933. Under the terms of the contract, if the tariff rate is lower than that stated in the contract, the shipper is charged at the lower rate. It is said that the maximum quantity contracted for does not represent the entire output of the shipper. The testimony on behalf of West Disinfecting Company, Bedford Pulp and Paper Company, and Norwich Pharmacal Company, which have contracts with Calmar, is that often they contract with purchasers of their commodity some time in advance of first delivery, and the contracts with Calmar insure to them the rate stability necessary in their business. It is clear that when intercoastal carriers were not required to file the rates charged shippers, but only their maximum rates, and carriers freely engaged in rate wars, the contract rate system served a useful purpose, but conditions have been changed by the Intercoastal Shipping Act, 1933, which requires that unless specifically authorized by the department, rates may not be changed on less than thirty days' notice to the public, and also authorizes the department either upon complaint or upon its own initiative to suspend proposed changes in the rates and enter upon hearings concerning the lawfulness thereof.

It will be noted that under paragraph 1 of the form of agreement Calmar reserves the right to fix the maximum quantity to be carried on any of its vessels and that under paragraphs 3 and 6 thereof the shipper obligates itself to tender a certain minimum number of carloads or tons. In these respects the contracting shippers are placed at a disadvantage as compared with noncontracting shippers for it is the right of shippers to ship in any quantity they choose and the obligation of carriers to carry the quantity tendered to them, due

regard being had for the proper loading of the vessel and the available tonnage, and such matter cannot be the subject of contracts. Under paragraph 5 Calmar agrees to keep the shipper advised of its proposed sailings and arrivals. This is an obligation not assumed or imposed by the tariff, and the service of keeping the contracting shipper advised of proposed sailings and arrivals results in an undue and unreasonable preference and advantage to the contracting shippers and undue and unreasonable prejudice and disadvantage to other patrons of respondent. In paragraph 6 it is stated that the rate and carload minimum weight shall not in any event exceed the rate and carload minimum weight specified in the contract. Such clause at law is deemed to have been agreed to in contemplation of the powers of Congress to legislate and of the department to enforce the law. The rate and minimum weight in the tariff afford the only legal basis upon which freight charges may be collected and any agreement to the contrary cannot be sanctioned by the department.

Omitting details not here necessary, copy of contract filed of record by Shepard reads in part—

It is this day mutually agreed by and between Shepard Steamship Co. (hereinafter called Carrier) and the Firestone Tire & Rubber Company (hereinafter called Shipper and/or Consignee) that the Carrier will charge Shipper and/or Consignee present rates on commodities as per attached rider for shipments from New Bedford, Mass., to Los Angeles, California, until January 1, 1935, and that in consideration thereof, the Shipper and/or Consignee will ship on vessels of the Carrier, now operating in Intercoastal Service, all such Commodities from Atlantic Coast to Pacific Coast Terminal Ports, the routing of which is controlled by the above-mentioned Shipper and/or Consignee shipments will run approximately 1,000 tons per year, and agrees to notify the Carrier sufficiently in advance so that they may arrange to take care of this cargo. Carrier shall not be obligated to lift cargo in excess of its ability to supply space for same on its steamers. * * *

The rider mentioned in the contract shows—

Shipper and/or Consignee agrees to ship not less than 150 tons per sailing from New Bedford per steamer when requested to place a vessel into that port to lift the tire fabric.

Shepard Steamship Co. agrees to take any size lot when vessel calls at New Bedford to load or discharge cargo.

Shepard Steamship Co. also agrees to allow shipper or Consignee the right to ship via another line provided no sailing available at time shipment must move.

Commodity covered under this contract as follows:

Item #1183 Fabric, Tire or Hose, not rubberized, frictioned, or otherwise treated, carload minimum 24,000#, @ 41½¢ per 100 pounds.

Without stopping to point out inconsistencies appearing on the face of the contract and rider, neither the contract nor rider refer to the rules and regulations contained in the tariff. Under the tariff New Bedford is not a regular port of loading. Cargo will be ac-

cepted for loading at such port only when accompanied by permit issued by Shepard or its agent. The tariff publishes the form of permit which, among other things, contains the notation "No shipments will be accepted after noon on scheduled sailing date." It cannot too strongly be stressed that the terms and conditions of the tariff may not be waived or changed by private agreements with shippers. Although the particular contract in question apparently has expired, it should be stated that it was of an exclusive patronage character and what was said by the court in the Menacho case applies here with equal force.

As the Intercoastal Shipping Act, 1933, requires the publication and filing of all the rates, charges, rules, and regulations for or in connection with intercoastal transportation, from which a carrier may not depart except after notice and in the manner prescribed by that statute, which affords shippers an opportunity to protest any such change; and as the Shipping Act, 1916, prohibits all unreasonable rates, charges, rules, and regulations and condemns discriminations that would give an undue preference or disadvantage, there is no need for a shipper to make a special contract with a carrier in order to entitle himself to intercoastal transportation for his goods at the same rates and charges, and under the same terms and conditions, as the goods of his competitor are transported. The prohibition of discrimination means, among other things, that no difference or distinction shall be made in rates that coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business which under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor. However nothing in those acts has deprived the carriers of the right to contract, and subject to the prohibitions mentioned they are free to make special contracts looking to a legitimate increase of their business. If such contract is entered, at law the parties may be taken to have done so subject to possible changes in the published rates, charges, rules, and regulations in the manner fixed by the statute, to which they must conform.

(l) Competition between members of the Gulf Intercoastal Conference and the United States Intercoastal Conference

Prior to 1928, controversies between intercoastal carriers operating from and to the Gulf, on the one hand, and intercoastal carriers operating from and to the Atlantic Coast, on the other, related merely to individual rates and individual commodities. Sometime during that year, Redwood Steamship Company, which had withdrawn from membership in the Gulf Intercoastal Conference,

established joint rail-and-ocean rates in conjunction with the Illinois Central Railroad Company on steel and steel articles from Chicago, Ill., to Pacific Coast destinations, which are said to have placed Chicago, through the Gulf ports, on a rate parity with Pittsburgh, Pa., through the Atlantic Coast ports. It is claimed this diverted to the Gulf ports shipments of steel and steel articles formerly moving by way of the Atlantic Coast ports to Pacific Coast destinations. It is also claimed such rate action had the further effect of placing at a disadvantage manufacturers located in the Youngstown, Ohio, territory, which took higher rail rates to the Atlantic Coast ports than the Pittsburgh territory. The record indicates that to meet this rate disadvantage, a considerable portion of the business of one such manufacturer was transferred from Youngstown to Chicago, thereby depriving Atlantic Coast intercoastal carriers of transporting such tonnage. This entire situation was aggravated by the establishment of additional joint rates between rail carriers, barge lines operating over the Mississippi River and waters tributary thereto, and Gulf intercoastal carriers, and joint rates between the barge lines and the Gulf intercoastal carriers. At present there are numerous such rates applicable on westbound and eastbound traffic through Mobile, Ala., Houston, Tex., and New Orleans. In respect to traffic originating in the southeastern section of the country and moving by water to Pacific Coast points, the Gulf carriers operating from Mobile are said to have an advantage over their competitors operating from Savannah, Ga., or Charleston to the extent that the terminal facilities at Mobile, owned and operated by the State of Alabama, are so built as to eliminate handling services and charges therefor, in many instances, between rail carriers and ocean vessels. On brief it is shown, by computations made from exhibits of record, that as compared with the year 1930, the gross revenue of the Gulf intercoastal carriers increased by \$1,889,095 in 1931, \$2,289,972 in 1932, and \$3,035,157 in 1933; and that of the Atlantic Coast competitors, excluding passenger carriers, decreased by \$9,839,826, \$18,263,950, and \$13,803,953, respectively. However, not all of these results may be attributed to the situation just described, for during a large portion of the period in question the Atlantic Coast carriers were engaged in a "pretty savage" rate war, during which each line made its own "quotations."

The joint rail-and-ocean rates and rail-barge-ocean rates are not under the control of the department. The information of record is not sufficient upon which to determine whether the barge-ocean rates or the Mobile terminal situation results in prejudice or disadvantage to the Atlantic Coast intercoastal carriers of the character condemned by the statute. This matter vitally affects the interest of all carriers

concerned. It would seem to be a problem for amicable solution by the affected intercoastal carriers. It is understood negotiations are being voluntarily conducted by them. Should they fail to adjust this matter, it could be the subject of a separate proceeding.

Chartering of vessels to shippers for intercoastal transportation of property

This question came into this case incidentally but inevitably because of its importance in intercoastal transportation. The first section of the Intercoastal Shipping Act, 1933, provides:

That when used in this act—

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.

Although the act does not define contract carriers, this term includes 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. It is hardly necessary to state that the provisions of that act and those provisions of the Shipping Act, 1916, governing common carriers by water in intercoastal commerce, also apply to contract carriers in intercoastal commerce. Such provisions of law the department may not waive.

The record discloses that subsequent to the enactment of the Intercoastal Shipping Act, 1933, large tonnage of grain, lumber, sulphur, and fresh fruits has moved between points on the Atlantic Coast and points on the Pacific Coast by way of the Panama Canal in vessels operated by Nelson, Gulf Pacific, McCormick, Quaker, Shepard, American Foreign Steamship Corporation, the Union Sulphur Company, Pacific American Fisheries Company, Northland Transportation Company, American Tankers Corporation, Hammond Lumber Company, Matson Navigation Company, Fairfield Steamship Company, Strachans Southern Steamship Company, Inc., South Atlantic Steamship Company, and W. J. Gray, Jr., under charters to Pacific Continental Grain Company, Kerr, Gifford and Company, Puget Sound Associated Mills, Stauffer Chemical Company, and other shippers, without proper tariffs, or tariffs of any character, on file with the department. It

is shown that between June 17, 1933, and September 15, 1934, nearly 87 percent of all grain moving from the Pacific Coast to the Gulf of Mexico or Atlantic Coast in intercoastal commerce moved in these chartered vessels. When Nelson, Gulf Pacific, McCormick, Quaker, or Shepard was the carrier, the amount per 100 pounds, or ton, resulting under the charter was lower than the corresponding rate published by it in its own intercoastal tariff. In the other instances shown such amount was lower than the lowest published intercoastal rate.

Some of the charter parties are of record. That between the Union Sulphur Company and A. C. Dutton Lumber Corporation, dated May 19, 1933, amended the next day, in effect until cancelled, is deserving of separate consideration. The Union Sulphur Company owns four steamers capable of making 10 or 11 knots, of deadweight tonnage aggregating 28,522 gross tons. Under this charter party it agrees to let, and A. C. Dutton Lumber Corporation, shippers of lumber, agrees to hire said vessels for voyages from certain Pacific Coast ports of the United States to West Indies, Mexican Gulf, and ports on the Atlantic Coast of the United States, subject to certain terms and conditions, one of which is that the charterers may sublet the vessels for all or any part of the time covered by the contract. The contract also provides, in part, as follows:

The Owners agree to deliver to Charterers a minimum of ten (10) vessels for loading under this charter and the Charterers agree to accept from Owners a minimum of ten (10) vessels for loading under this charter, per year. Subject to Charterers' approval, the Owners may tender up to a maximum of sixteen (16) vessels for loading under this charter per year. It is further agreed between the Owners and the Charterers that when such vessels are accepted for use by Charterers that the same terms and conditions shall apply to such additional vessels.

Vessels to be placed at the disposal of the Charterers at mutually agreed ports on the Pacific Coast * * * Vessel on her delivery to be ready to receive cargo, with clean-swept holds and tight, * * * (and with full complement of officers, seamen, engineers, and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, * * * as the Charterers or their agents shall direct on the following conditions:

CLAUSE 1: That the Owners shall provide and pay for all provisions, wages and consular, shipping and discharging fees of the Captains, Officers, Engineers, Firemen and Crews, shall pay for the insurance of the vessel, also for all the cabin, deck, engine room and other necessary stores, including boiler water, and maintain their class, and keep the vessels in a thoroughly efficient state in hull, machinery, and equipment for and during the service.

CLAUSE 2: That the Charterers shall provide and pay for all the fuel except as otherwise agreed, port charges, pilotages, agencies, commission, consular charges (except those pertaining to the Captains, Officers, and Crew), and all other usual expenses except those before stated, but when any vessel puts into a port for causes for which vessel is responsible, then all such charges incurred

shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners' account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers' account.

Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo. * * *

CLAUSE 3: That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel oil remaining on board each vessel * * *

CLAUSE 4: That the Charterers shall pay for the use and hire of the said vessels, on the first delivery of each vessel, at the following rates: * * * per day (or pro rata for part of day) commencing on and from the day of her delivery, as aforesaid, and hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) * * *. It is mutually recognized that market values and operating costs are subject to variations and as this is a continuing charter over an indefinite period of time, it is therefore mutually agreed that if these charter hire rates should subsequently become out of line with such changes in market values and operating costs the Owners and the Charterers hereby agree to adjust such charter hire rates on subsequent deliveries (vessel) so as to fairly reflect such changes in market values and operating costs, or if unable to agree, rates to be determined by arbitration in accordance with Clause 14.

CLAUSE 5: Payment of said hire to be made in New York in cash U. S. currency upon completion of each voyage. * * *

Cash for vessels' ordinary disbursements at any port may be advanced as required by the Master, by the Charterers, or their Agents, Charterers to be promptly reimbursed for such advances by the Owners. The Charterers, however, shall in no way be responsible for the application of such advances.

CLAUSE 6: That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that the Charterers or their Agents may direct, * * *

CLAUSE 7: That the whole reach of the Vessels' Holds, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for ship's Officers, Crew, Tackle, Apparel, Furniture, Provisions, Stores, and Fuel.

CLAUSE 8: The Masters, Officers, Engineers, and Crews (although appointed by the Owners) shall be under the orders and directions of the Charterers; and Charterers are to load, stow, and trim the cargoes at their expense under the supervision of the Masters, who are to sign Bills of Lading for cargoes as presented, in conformity with Mate's or Talley Clerk's receipts. * * *

CLAUSE 9: That if the Charterers shall have reason to be dissatisfied with the conduct of any Master, Officer, or Engineer, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, in its discretion, make changes in the appointments. * * *

CLAUSE 11: That the Master shall use diligence in caring for the cargo. * * *

CLAUSE 23: The Charterers agree, in the event the vessels are used by them to carry freight for hire, either as common carriers or contract carriers in intercoastal service of the United States, the Charterers will file rates and regulations with the United States Shipping Board to comply with the "Shipping Act of 1933."

Approximately 60 percent of the lumber shipments made by this shipper in intercoastal commerce moves in these chartered vessels. It was admitted the amount resulting under the charter is lower than the lumber rate contained in the tariff of carriers formerly members of United States Intercoastal Conference. This contract does not create a demise of the vessel. The charterers are not owners *pro hac vice*. Although the lumber company reserves the right to give orders and directions to the masters, officers, engineers, and crews, the masters, officers, engineers, and crews are the employees of the owners, upon whom rests the duty of navigation. It is significant that according to the terms of the charter, in the event the vessels are used by the charterers to carry freight for hire, "either as common carriers or contract carriers" in intercoastal transportation, they must file rates and regulations with the department. The Union Sulphur Company files a tariff with the department, SB-I No. 4, bearing the notation "(Not a Common Carrier)", but this tariff does not cover the transportation under consideration.

The Intercoastal Shipping Act, 1933, does not differentiate contract from common carriers. Both are the same for all of its purposes. It prohibits one and the other from engaging or participating in intercoastal transportation unless all the rates, charges, rules, and regulations have been published and filed with the department. It cannot too strongly be stressed that failure of a carrier, whether contract or common, to properly publish and file its rates is as serious a violation of the act as its failure to observe such rates after they have been published and filed.

BY THE SECRETARY OF COMMERCE:

Except as to certain unimportant changes the foregoing is the report of the examiner who heard the case and proposed the following conclusions:

(1) That the tariffs filed by each respondent fail to show plainly the places between which freight is carried; or to name all the rates and charges for or in connection with transportation between intercoastal points on its own route, or between intercoastal points on its own route and points on the routes of other carriers by water with which it has established through routes for intercoastal transportation; or to state separately each terminal or other charge, privilege, or facility, granted or allowed, or the rules and regulations which change, affect, or determine such aforesaid rates or charges, or the aggregate of such aforesaid rates or charges, or the value of the service rendered to the consignor or consignee, in violation of section 2 of the Intercoastal Shipping Act, 1933. Each respondent should be required to amend its tariffs as to show plainly, among other things,

(a) all the rates for transportation between points on its own route, or between points on its own route and points on the route of each carrier by water with which it has established through routes for intercoastal transportation; (b) the specific terminals between which each rate applies; (c) each service, such as storage, handling, piling of lumber, wharfage, lighterage, barging, segregation, stenciling, pool cars, and heavy lifts rendered to the consignor or consignee; (d) the charge for each such service; (e) 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.

(2) That respondents, formerly members of United States Intercoastal Conference, Calmar and Shepard permit storage of property; load and unload lighters, rail cars, or trucks; handle property between such equipment and their own vessels; absorb storage, wharfage, dockage, handling, lighterage, trucking, and toll charges without proper tariff authority; or fail to collect charges for segregation, heavy lifts, or pool cars in accordance with their tariffs, in violation of section 2 of the Intercoastal Shipping Act, 1933. Each such respondent should be required to cease and desist from such unlawful practices.

(3) That the practice of Shepard to name tariff rates and charges lower by fixed percentages than those of its competitors, American Hawaiian, Panama Pacific, Argonaut, Calmar, Dollar, Isthmian, Luckenbách, McCormick, Nelson, Quaker, Pacific Coast Direct, Grace, Arrow, Weyerhaeuser, or Williams, for like transportation in intercoastal commerce between points on the Atlantic Coast and points on the Pacific Coast results in undue and unreasonable advantage to it and in undue and unreasonable prejudice and disadvantage to the carriers named, and is unjust and unreasonable, in violation of sections 16 and 18 of the Shipping Act, 1916. Shepard should be required to cease and desist from such unlawful practice. This finding includes Nos. 152 and 154.

(4) That it is in the public interest that respondents operating between points on the Atlantic Coast and points on the Pacific Coast establish and maintain uniform rates and charges for intercoastal transportation between such points. The basis for such rates and charges cannot be determined or prescribed on the instant record. Such respondents appear in need of additional revenue to enable them to keep their fleets in good repair and maintain modern and efficient service, but this does not warrant requiring Shepard, for instance, to increase its rates and charges to the level of those maintained by respondents operating on basis of "A" or "B" rates, for

such rates do not afford a proper standard. Affected respondents should be allowed sufficient time to file proper tariffs as indicated in (1) above, naming also uniform rates and charges for intercoastal transportation. In the making of such tariffs, consideration should be given, among other things, to the cost of service, rights of shippers, and transportation and traffic conditions. Should they fail to name uniform rates and charges, any affected respondent could be permitted to reduce its rates and charges to the level of those maintained by Shepard. Stability could be attained by refusing further reductions unless a clear showing is made that they are proper.

(5) That no finding is necessary as to the effect, if any, pooling of revenue had on the rates of respondents formerly members of United States Intercoastal Conference.

(6) That the rates and charges in issue in No. 119 are not shown to be unreasonable, unduly preferential or prejudicial, or otherwise unlawful, and the complaint be dismissed.

(7) That the so-called port equalization rules contained in the tariffs of respondents formerly members of United States Intercoastal Conference, Calmar and Shepard, are unlawful, in violation of section 2 of the Intercoastal Shipping Act, 1933, and should be required cancelled.

(8) That the filing of the rates and charges in issue in No. 114, and similar rates and charges named by class "A" carriers between intercoastal points as to which no transportation service is maintained, is not in consonance with section 2 of the Intercoastal Shipping Act, 1933, and should be required cancelled.

(9) That the practice of members of Gulf Intercoastal Conference to exact higher rates and charges from shippers who have not executed so-called rate contracts with them than from shippers who have done so, for like intercoastal transportation, is unlawful, in violation of sections 16 and 18 of the Shipping Act, 1916, and such respondents should be required to cease and desist from such unlawful practice.

(10) That the contract rate systems of Calmar and Shepard are in violation of section 2 of the Intercoastal Shipping Act, 1933, and sections 16 and 18 of the Shipping Act, 1916, and such respondents should be required to cease and desist from such violations of law. This finding includes No. 121.

(11) That respondents Nelson, Gulf Pacific, McCormick, Quaker, Shepard, American Foreign Steamship Corporation, the Union Sulphur Company, and American Tankers Corporation have engaged, or are now engaged, in transportation each as a contract carrier by water in intercoastal commerce without proper tariffs on file with

the department, in violation of section 2 of the Intercoastal Shipping Act, 1933. Each such respondent should be required to cease and desist from such unlawful practice.

Numerous carriers by water, such as those hereinbefore indicated as participating in through intercoastal routes with American-Hawaiian and other respondents; or such as Pacific American Fisheries Company, Northland Transportation Company, Hammond Lumber Company, Matson Navigation Company, Fairfield Steamship Company, Strachans Southern Steamship Company, Inc., South Atlantic Steamship Company, and W. J. Gray, Jr., shown of record to be contract carriers engaging in intercoastal commerce, have not filed tariffs with the department as required by law. As only carriers filing tariffs for intercoastal transportation were named respondents, these other carriers are not parties to this proceeding. However, to clear all doubt, it is well to repeat that every common or contract carrier engaging in intercoastal transportation is subject to the Intercoastal Shipping Act, 1933, and whether made respondent or not, is required to comply with every provision thereof. Various reasons might be urged in defense of violations of that act shown of record, but they should not be accepted in respect of violations after the act has been construed by the department. Any such violation is punishable by a fine of not less than \$1,000 nor more than \$5,000 for each act of violation, or for each day such violation continues. Certain specific violations of the act by Puget Sound on-carriers have been set forth in this report. It should suffice to state that each such violation is punishable in the manner indicated, even though no specific recommendation is made herein in respect thereto.

This investigation in many respects is in the nature of an advisory proceeding and no order or orders, except in the complaint and answer cases, should be entered by the department at this time. However, the record contains full information as to each subject of inquiry, except competition between carriers operating from and to the Gulf and carriers operating from and to the Atlantic Coast, and should be kept open for a reasonable length of time for such purposes as the department may deem necessary.

The report was served upon the parties. Exceptions were filed thereto by some respondents and some interveners. No mistake of fact is alleged or shown. The exceptions of Dollar Steamship Lines, Inc., do not state the grounds upon which they are based, and will be given no further consideration. Those filed by Sacramento Chamber of Commerce have been considered, and are found not well taken. Consideration will now be given to the other exceptions filed in the order the conclusions of the examiner are stated.

Shepard Steamship Company excepts to the first conclusion on the ground it is so vague and indefinite as to be incapable of literal compliance. The conclusion follows closely the language of the statute and it is found capable of literal compliance. The exception of Calmar Steamship Corporation is based on the ground, in substance, that requiring publication of specific terminals between which the rates apply will result in loss of revenue to respondents. At present intercoastal rates apply from or to such indefinite places as "San Francisco Bay", "Los Angeles Harbor", or "New York Harbor." These terms are too broad, cover many miles of shore line, and include many terminals not accessible to ocean carriers. From the tariffs shippers cannot state the particular point at which their cargo is received or delivered by the carrier. The requirement referred to is contemplated by law for the protection of the shipper as well as of the carrier. As respondents are free to designate in their tariffs as many terminals, public or private, as they wish, the contention of this respondent does not appear to be well founded.

Swayne & Hoyt, Ltd., Gulf Pacific Mail Line, Ltd., and McCormick Steamship Company base their exceptions on the ground, in substance, that it is not practical to publish terminal charges and keep the tariffs current when such charges are not the charges of the carrier performing the transportation service. However, requiring intercoastal carriers to publish each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part of the aggregate of the rates or charges, or the value of the service rendered to the consignor or consignee is not the invention of the proposed report. Such requirement is contained in section 2 of the Intercoastal Shipping Act, 1933. Unless complied with, the shipper will be deprived of the paramount right the statute gives to him to know the price of transportation and services for or in connection therewith to him and his competitors. Many of the difficulties mentioned by these respondents will be eliminated by specifying in the tariffs the particular terminals between which the rates apply. Furthermore in procuring terminal facilities carriers should make proper arrangements to safeguard the obligations imposed upon them by law. Such obligations this department does not have the power to waive. Boston Port Authority excepts to the failure of the proposed report to recommend that delivery of lumber be made at a point accessible to the receiver after the performance by the carrier, without charge, of the service of back-piling. However, from the time this investigation was instituted it was made clear to all parties that its nature did not permit of giving consideration to the handling of any particular commodity at any particular point. Lumber is one of the most important com-

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modities handled in intercoastal transportation, and justice to the matters raised by intervener may best be done under a separate proceeding. The questions presented by Harbor Commission of the City of San Diego as to assembling and distributing charges have been disposed of in No. 96, a separate proceeding.

Two exceptions, one by Shepard Steamship Company and the other by Nelson Steamship Company, were filed to the second conclusion. Each is found not well taken.

The third conclusion was excepted to by Shepard Steamship Company. It does not point out the particular matters upon which it relies or wherein the conclusion is in error. Such exception is found not well taken.

The fourth conclusion is excepted to by Shepard Steamship Company, Calmar Steamship Corporation, Nelson Steamship Company, McCormick Steamship Company, Shippers' Conference of Greater New York, and Chain Store Traffic League, which urged differences in intercoastal rates should exist, each on the basis suggested by it, amply discussed hereinbefore. That the agreements governing the United States Intercoastal Conference were the result of compromises which ignored the rights of carriers and shippers, and that such compromises do not afford the proper standard for the future, admits of no doubt. Although the proposed conclusion is that uniformity in the rates and charges is in the public interest, there is nothing in the report compelling respondents to observe uniform rates and charges.

No exceptions were filed to the fifth conclusion.

Exceptions to the sixth conclusion were filed by American Line Steamship Corporation, Nelson Steamship Company, Harbor Commission of the City of San Diego, City of Oakland, Armstrong Cork Company, and companies associated with that company. Those of Nelson Steamship Company and Armstrong Cork Company and its associates are found not well taken. The Harbor Commission of the City of San Diego urges that Luckenbach Gulf Steamship Company, Inc., and Swayne & Hoyt, Ltd., by means of the Gulf Intercoastal Conference agreement, prevent each other from extending service to the Port of San Diego, and its exception relates to the failure of the proposed report to find such carriers violate section 2 of the Intercoastal Shipping Act, 1933. However, the lawfulness of the Gulf Intercoastal Conference agreement is not involved in No. 126, or in any of the proceedings included in the report. Neither does the record warrant a finding. Any such matter should be the subject of a separate proceeding. What constitutes intercoastal commerce and what carriers by participating therein become subject to the provisions of the Shipping Act, 1916, and Intercoastal Shipping Act, 1933,

are questions clearly discussed in the report, and the matters urged in the exceptions of American Line Steamship Corporation or City of Oakland do not justify reversing the examiner.

The questions as to port equalization rules involved in this proceeding are substantially the same as those disposed of in *Intercoastal Rates of Nelson Steamship Company, U. S. S. B. B. 326*, and the exceptions to the seventh conclusion, filed by Boston Port Authority and Shippers' Conference of Greater New York, are found not well taken.

No exceptions were filed to the eighth conclusion.

The ninth conclusion was excepted to by American Line Steamship Corporation, Luckenbach Gulf Steamship Company, Inc., Swayne & Hoyt, Ltd., and Gulf Pacific Mail Line, Ltd. They are based principally on the effect such conclusion will have on transportation in foreign commerce, on the ground no strong opposition was made of record to the contract rate system, and that such system was approved in *Rawleigh v. Stoomvaart et al., 1 U. S. S. B. 235*, to which case no reference is made in the report. It is notorious that intercoastal transportation is not attended by many of the traffic and transportation circumstances attending transportation in foreign commerce, and from the report it is clear that the finding and conclusion therein contained relate to intercoastal transportation and not to transportation in foreign commerce. The Rawleigh case involved transportation in foreign commerce, the issues there are distinguishable from the issues here, and that decision should have no controlling effect on intercoastal transportation. The fact that no strong opposition was made of record is not a defense.

Shepard Steamship Company and Calmar Steamship Corporation excepted to the tenth conclusion. The grounds for the first exceptions are not stated, and they need no further consideration. As grounds for the second exceptions, the department is referred to the brief filed by respondent in No. 131 and decisions there cited. Neither the matters urged in the brief nor the cases there cited are convincing, and the exceptions are not well taken.

The last conclusion was excepted to by Nelson Steamship Company, Calmar Steamship Corporation, the Union Sulphur Company, and San Francisco Chamber of Commerce. Those of Nelson Steamship Company have been considered and are found not well taken. Those of Calmar Steamship Corporation, while apparently agreeing with the conclusion, state the conclusion does not make clear that the rates of contract carriers must not result in lower intercoastal transportation than the rates of intercoastal carriers operating directly between the Atlantic and Pacific coasts. They point out services of contract carriers are only available to few shippers and permitting

such exclusive shippers to pay less for transportation than paid by shippers who cannot avail themselves of the services of contract carriers will result in unjust discrimination. However, this takes us into the field of what relation, if any, should the rates of contract carriers bear to the rates of common carriers, which is a matter not involved in this proceeding. For this reason such exceptions are not well taken. The filing requirement on contract carriers is imposed by the Intercoastal Shipping Act, 1933, which states that the term "common carrier by water in intercoastal commerce" for the purposes of the 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. Undoubtedly the words "contract carrier" as there used have a meaning. In the absence of statutory definition, a particular meaning has been placed upon them by the report. As to each case as it arises, the question, one of fact, is whether the operations of the carrier fall within the meaning given the words "contract carrier." From the charter between The Union Sulphur Company and A. C. Dutton Lumber Corporation it is clear that in transporting the cargo of the latter company, The Union Sulphur Company falls within the meaning of such words. To follow the exceptions of The Union Sulphur Company and San Francisco Chamber of Commerce would be the equivalent of saying that such words are meaningless. As long as they remain in the statute it is the duty of every contract carrier to file tariffs as contemplated by the act. The filing of copy of the charter by the charterer does not satisfy such filing requirement.

Another exception filed by American Line Steamship Corporation is to the language of the report relating to Rules 4 and 5 of Agent Thackara's tariff SB-I No. 4, and to absorptions of charges for loading and unloading rail cars or lighters, or for other services which under certain circumstances are not the duty of intercoastal carriers to perform. Such exception is based on the ground that terminals in practically every port differ greatly in location and convenience to various classes of shippers, and unless carriers generally be permitted to perform the services referred to and similar services without charge, they will not be able to meet the competition of those carriers having the most favorably located terminals. However, the line between proper competition and improper competition must be drawn at some place. The absorptions referred to by this respondent in principle are difficult to distinguish from absorption of any other expense of the shipper. That such absorptions are intended to attract traffic is no justification. The exception is not well taken.

On consideration of all the facts and circumstances of record, including the exceptions, the department adopts as its own the report and conclusions of the examiner. However, appropriate orders will be entered requiring (1) respondents which on July 31, 1934, were members of United States Intercoastal Conference, States Steamship Company, Calmar Steamship Corporation, and Shepard Steamship Company each to amend its tariffs on eastbound and westbound intercoastal transportation in the manner specifically set forth in the first conclusion, and conforming to the seventh and eighth conclusions; and ceasing and desisting from the unlawful practices specifically mentioned in the second conclusion; (2) requiring Shepard Steamship Company to cease and desist from the unlawful practice to name tariff rates and charges lower by fixed percentages than those of its competitor specifically mentioned in the third conclusion; (3) dismissing the complaint in No. 119; requiring members of Gulf Intercoastal Conference each to cease and desist from the unlawful practice of exacting higher rates and charges from shippers who have not executed rate contracts with it than from shippers who have done so, for like intercoastal transportation; (4) requiring Calmar Steamship Corporation and Shepard Steamship Company each to discontinue its contract rate system; and (5) requiring respondents Nelson Steamship Company, Swayne & Hoyt, Ltd., McCormick Steamship Company, Pacific Atlantic Steamship Company, Shepard Steamship Company, American Foreign Steamship Corporation, The Union Sulphur Company, and American Tankers Corporation each to file tariffs as contract carrier by water in intercoastal transportation, as required by section 2 of the Intercoastal Shipping Act, 1933, unless such contract carrier operations are discontinued.

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DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 128

INVESTIGATION—SECTION 19 OF MERCHANT MARINE ACT, 1920

Submitted February 25, 1935. Decided July 12, 1935

Rules and regulations requiring the filing of schedules of export rates by common carriers by water in foreign commerce prescribed.

J. Sinclair and *Roscoe H. Hopper* and *Burton H. White* for America France Line; American Line; American Scantic Line, Inc.; Anchor Line (Henderson Bros.), Ltd.; Anchor-Donaldson Line; Atlantic Transport Company, Ltd.; The Atlantic Transport Company of West Virginia (Atlantic Transport Line); Bristol City Line of Steamships, Ltd. (Bristol City Line); Cairn Line of Steamships, Ltd. (Cairn-Thompson Line); Canadian Pacific Steamships, Ltd.; Compagnie Generale de Navigation a Vapeur (Fabre Line); Compagnie Maritime Belge (Lloyd Royal) S. A.; Cunard Steamship Co., Ltd. (Cunard Line); Den Norske Amerikalinde A/S Oslo (Norwegian American Line); Dominion Line (Canadian/Bristol Channel Joint Service of Bristol City Line of Steamships, Ltd., and Donaldson Line, Ltd.); Donaldson Line, Ltd.; Ellerman's Wilson Line New York, Inc. (Ellerman's Wilson Line); Frederick Leyland & Co., Ltd. (Leyland Line); Furness, Withy & Co., Ltd. (Furness Line); Inter-Continental Transport Services, Ltd. (County Line); "Italia" Flotte Riunite Cosulich-Lloyd Sabauda-Navigazione Generale (Italia Line); Manchester Liners, Ltd.; National Steam Navigation Co., Ltd. of Greece (National Greek Line); Polish Transatlantic Shipping Co., Ltd. (Gdynia America Line); Rederiaktiebolaget Transatlantic (Transatlantic Steamship Co.); Societa Anonyme de Navigation Belge Americaine (Red Star Line); Ulster S/S Co., Ltd. (Head Line and Lord Line); Oceanic Steam Navigation Co., Ltd. (White Star Line); Aktiebolaget Svenska Amerika Linien (Swedish American Line); and Lampert & Holt Line, Ltd.

George H. Terriberry, D. H. Walsh, and A. C. Cocks for Lancashire Shipping Co., owners Castle Line; Ozean Linie (Ozean Line); Richard Meyer Co.; Richard Meyer Co. of Texas; Lykes Bros.-Ripley Steamship Co., Inc. (Southern States Line); Wilkens & Biehl (Texas Continental Line); Willh. Wilhelmsen (Wilhelmsen Line); Lykes Bros.-Ripley Steamship Co., Inc. (Dixie U. K. Line); Larrinaga & Co., Ltd. (Owners, Larrinaga Line); Wm. Parr & Company, as principals (covering its acts as General Agents for the Harrison Line at Texas Ports, except Texas Sabine District Ports); Lykes Bros.-Ripley Steamship Co., Inc. (Dixie Mediterranean Line).

Elkan Turk and Herman Brauner for Bank Line, Ltd.; Barber Steamship Lines, Inc.; China Mutual Steam Navigation Co., Ltd., and The Ocean Steam Ship Co., Ltd. (Alfred Holt & Co., Managers), and Kokusai Kisen Kabushiki Kaisha.

Lillick, Olson and Graham by *Chalmers G. Graham* for General Steamship Corp., Ltd. (Kawasaki Kisen Kabushiki Kaisha); N. V. Stoomvaart Maatschappij "Nederland" and N. V. Rotterdamsche Lloyd (Pacific-Java Bengal Line); Silver Line, Ltd. Pacific Argentine Brazil Line; Oceanic and Oriental Navigation Co.; Westfal Larsen & Co. A/S; Grace Line, Inc.; Knutsen Line; Latin America Line; Panama Mail Steamship Co.; United Fruit Co. and Transatlantic Steamship Co. Ltd. (Pacific Australia Direct Line).

George F. Foley for American Republics Line; The Booth Steamship Co., Ltd.; Cia de Navagacao Lloyd Brasileiro; Houston Line (London) Ltd.; International Freighting Corp., Inc.; Linea Sud Americana, Inc.; Mooremack Lines, Inc.; Munson Steamship Line; Wilhelmsen Steamship Line and Lamport & Holt, Ltd.

W. F. Taylor, C. L. Kaufman, J. Sinclair and Roscoe H. Hupper and Burton H. White for American Hampton Roads Line; Oriole Line and Yankee Line,

Charles Harrington, George H. Terriberry, D. H. Walsh and A. C. Cocks for Compania Maritima del Nervion (Nervion Line); Navigazione Alta Italia (Creole Line) and Navigazione Odero (Odero Line);

Elkan Turk, Herman Brauner and Lillick, Olson and Graham by *Chalmers G. Graham* for Kerr Steamship Company, Inc.; Nippon Yusen Kaisha and Osaka Shosen Kaisha.

F. A. Ryan, J. Sinclair and Roscoe H. Hupper and Burton H. White for United States Line Company (American Merchant Lines) and United States Line Company (United States Lines).

E. S. Binnings, George H. Terriberry, D. H. Walsh, A. C. Cocks, J. Sinclair and Roscoe H. Hupper and Burton H. White for N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn" (Holland America Line) and Navigazione Libera Triestina S. A.

J. Sinclair and Roscoe H. Hupper and Burton H. White and George H. Terriberry, D. H. Walsh and A. C. Cocke for Aktiebolaget Svenska Amerika Mexiko Linien (Swedish America Mexico Line) and Det Forenede Dampskibs Selskab (Scandinavian American Line).

Francis J. Haley, Hunt, Hill & Betts by *Frank J. Zito, J. Sinclair and Roscoe H. Hupper and Burton H. White* for American Diamond Lines, Inc. (Black Diamond Lines).

Ferguson Smith, Philip E. McIntyre, J. Sinclair and Roscoe H. Hupper and Burton H. White for Baltimore Mail Steamship Co. (Baltimore Mail Line).

W. H. Dausey, J. Sinclair and Roscoe H. Hupper and Burton H. White for The Export Steamship Corporation (American Export Lines).

J. H. Jordan, George H. Terriberry, D. H. Walsh, A. C. Cocke, J. Sinclair and Roscoe H. Hupper and Burton H. White for Cosulich Societa Triestina di Navigazione (Cosulich Line).

E. S. Binnings, George H. Terriberry, D. H. Walsh, A. C. Cocke, J. Sinclair and Roscoe H. Hupper and Burton H. White for Compagnie Generale Transatlantique (French Line).

J. Sinclair and Roscoe H. Hupper and Burton H. White and Lillick, Olson and Graham by *Chalmers G. Graham* for Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft (Hamburg American Line).

J. Sinclair and Roscoe H. Hupper and Burton H. White, George H. Terriberry, D. H. Walsh, A. C. Cocke and Lillick, Olson and Graham by *Chalmers G. Graham* for Norddeutscher Lloyd (North German Lloyd).

J. H. Jordan, George H. Terriberry, D. H. Walsh and A. C. Cocke for Deutsche Dampschiffahrts-Gesellschaft "Hansa" (Hansa Line); Strachan Shipping Company (Strachan Line) and Unterweser Reederei A. G.

E. S. Binnings, George H. Terriberry, D. H. Walsh and A. C. Cocke for Armement Deppe, S. A.

W. B. Garner, George H. Terriberry, D. H. Walsh and A. C. Cocke for Waterman Steamship Corporation (Mobile Oceanic Line).

A. W. Parry, George H. Terriberry, D. H. Walsh and A. C. Cocke for Tampa Interocean Steamship Co. (Gulf West Mediterranean Line).

A. W. Parry for American Gulf Orient Line.

Kenneth Le Blanc, George H. Terriberry, D. H. Walsh and A. C. Cocke for Alfred Le Blanc, Inc., as Principals (covering its acts as General Agents for the Harrison Line at New Orleans, Sabine and East Gulf Ports).

M. J. Buckley, Keith R. Ferguson, Wandless and Lanier by *Edgar G. Wandless, Lillick, Olson and Graham* by *Chalmers G. Graham* for Dollar Steamship Lines, Inc. Ltd.

Elkan Turk, Herman Brauner, George F. Foley and Lillick, Olson and Graham by *Chalmers G. Graham* for Prince Line, Ltd.

Victor J. Freeze, Elkan Turk and Herman Brauner for American Pioneer Line.

N. O. Pedrick and George F. Foley for Mississippi Shipping Co., Inc.

L. L. Bates and Keith R. Ferguson for American Mail Line, Ltd. and Tacoma Oriental Steamship Co.

Walter Shelton, H. R. Dorr and Parker McCollester for Norton, Lilly and Co.

Parker McCollester for Ellerman and Bucknall Steamship Co., Ltd.

McCutcheon, Olney, Mannon and Greene by *Joseph B. McKeon* for The East Asiatic Company, Ltd.

C. S. Belsterling and T. F. Lynch for Isthmian Steamship Company.

James A. Farrell, Jr. and L. D. Stapleton, Jr. for American South African Line, Inc.

William R. Murrin for Page L'Hote Co., Ltd.

Markell C. Baer and Robert M. Ford for The City of Oakland.

C. F. Reynolds for San Diego Harbor Commission and San Diego Chamber of Commerce.

James F. Collins for Board of Harbor Commissioners City of Long Beach.

C. D. Arnold for Board of Commissioners, Lake Charles Harbor and Terminal District.

L. D. Estes for American Cotton Cooperative Association.

Haight, Smith, Griffin & Deming for Foreign Tramp Owners.

A. D. Whittemore for American Cyanamid Co. and Phosphate Export Association.

O. W. Tuckwood for Johns Manville International Corp.

H. J. Wagner for Norfolk Port-Traffic Commission.

Charles R. Seal and G. H. Powder for Baltimore Association of Commerce.

Walter H. Brusche for The Merchants Association of New York.

Richard Parkhurst, Charles E. Ware, Jr., Frank S. Davis, and Walter McCoubrey for Boston Port Authority.

S. H. Williams for Philadelphia Chamber of Commerce.

William A. Lockyer for Philadelphia Bourse.

S. H. Williams and William A. Lockyer for Joint Executive Transportation Committee of Philadelphia Commercial Organizations.

J. P. Magill for Maritime Association of the Port of New York.
Dabney C. Waring for Shippers Conference of Greater New York.
George F. Hichborn for United States Rubber Company.
R. H. Horton for Port of Philadelphia Ocean Traffic Bureau.
Julius Henry Cohen, Wilbur LaRoe, Jr., and W. H. Connell, Jr.
for Port of New York Authority.

REPORT OF THE DEPARTMENT

This proceeding was instituted by the department for the purpose of determining (1) if conditions unfavorable to shipping in the foreign trade exist as a result of competitive methods and practices employed by owners, operators, agents, or masters of vessels of foreign countries; and (2) what rules and regulations should be made as authorized and directed by Section 19 of the Merchant Marine Act, 1920, to adjust or meet such conditions if found to exist. A copy of the order instituting the proceeding was served upon all carriers by water known to be engaged in the foreign trade of the United States, and public announcement of the investigation and inquiry was made through the press.

In connection with this investigation the Division of Regulation of the United States Shipping Board Bureau has conducted public hearings in San Francisco, New Orleans, and New York, after due notice to all carriers upon whom the order was served and to the public through the press. A considerable volume of testimony under oath has been recorded and briefs have been filed by a substantial number of carriers. At the hearings twenty-two American flag carriers submitted testimony, either individually or as members of Conferences, in support of their contention that in various trades which they serve conditions unfavorable to shipping exist as a result of alleged unfair competitive practices of certain foreign flag carriers. These American flag carriers were supported by over seventy foreign flag carriers who participate in our foreign commerce, and by a large number of shippers. The American flag carriers and the foreign flag carriers referred to, both at the hearings and in briefs, have suggested rules and regulations to be promulgated by the Department under Section 19 to adjust or meet the conditions testified to. Only three of the carriers who appeared at the hearings did not ask for the promulgation of rules and regulations.

For the purpose of this report the carriers by water in our foreign commerce may be grouped into three main classes: (1) Common carriers furnishing either regular or irregular services who have joined in rate-fixing agreements, or conferences, with other common carriers in the same trade, as authorized by law. These carriers will be referred to hereafter in this report as conference carriers. Nearly all

American flag carriers fall within this classification. (2) Common carriers furnishing either regular or irregular services without becoming members of the conferences in the trades in which they operate. These carriers will be referred to hereinafter as nonconference carriers. (3) Carriers transporting on any one voyage cargo supplied by a single shipper only under a single charter party or contract of affreightment. Such carriers will be referred to in this report as tramps, and this distinction between tramps and the other two classes of carriers will be elaborated upon later.

The contention of the carriers who ask that rules and regulations be promulgated under Section 19 is as follows:

In practically every trade the great majority of the carriers, other than tramps, are members of conferences formed for the purpose of stabilizing rates and conditions and approved by this Department or the former United States Shipping Board under Section 15 of the Shipping Act. These carriers allege that in a number of trades there are foreign flag nonconference carriers which are not guided by proper rate-fixing principles. In one form this nonconference method of rate making consists of soliciting freight on the basis that the nonconference carrier will cut any rate the conference may establish by a specified percentage or amount. Therefore any attempt of the conference carriers to meet the rates of nonconference carriers who resort to this method of competition is of no avail. In other instances nonconference carriers without any rate schedules of their own, consistently, and insofar as possible secretly, underquote the established conference rates by whatever amount they deem necessary to get the business away from the conference carriers, and any attempt of the conference to meet such quotations is countered by further underquoting. It is further alleged that in some instances nonconference carriers have used rate cutting as a club to compel the adoption of pooling agreements, rate differentials, or spacing of sailings agreements on such terms as the nonconference carriers dictate. These are the methods of competition which the conference carriers claim are unfair, and at the hearings much evidence was given, not only by carriers but by many shippers, in support of the contention that such methods of competition have produced conditions which require the promulgation of rules and regulations under Section 19 of the Merchant Marine Act, 1920.

The principal trades with respect to which evidence of this character was introduced and dealt with in briefs are as follows:

Atlantic/Far East.

Gulf/Far East.

Pacific/Far East.

Atlantic/United Kingdom and Europe.

Gulf/United Kingdom and Europe.
Atlantic/South Africa.

A summary of conditions existing in each of these trades follows:

ATLANTIC/FAR EAST

In this trade nonconference competition appears to have had more far reaching effects than in any other trade, and conditions in this trade will therefore be dealt with at some length.

Following a prolonged period of severe rate competition, the first conference in this trade was formed in 1905, comprising the only four lines then operating. Some two years later the Ellerman & Bucknall Steamship Company entered the trade. Although this company did not then become a member of the conference it generally maintained the same rates as those established by the conference. For the next ten years this conference functioned without further competition from nonconference carriers. During this period rates remained stable and cargo moved freely in increasing volume. These services, however, were by foreign-flag vessels only, and after the outbreak of the World War all were withdrawn from this trade. In 1914 a Japanese line, the Nippon Yusen Kaisha, inaugurated a service in order to protect Japan's trade with our Atlantic Coast. It was upon this service that American exporters using Atlantic ports had to rely during the war except for occasional neutral foreign-flag steamers which were berthed by the Barber Steamship Company whenever such vessels could be chartered. Services in this trade under the American flag were among the first to be established by the United States Shipping Board following the close of the World War. Nippon Yusen Kaisha continued its service, and most of the members of the former Far East Conference gradually resumed their services. In addition other carriers entered the trade, so that by 1921 fourteen different companies were operating with a total of 146 sailings a year. Conditions, however, were not stable.

In order to bring about stabilization, there was formed on September 1, 1922, under the auspices of the Shipping Board's operating agency, then the Emergency Fleet Corporation, the present Far East Conference; a voluntary association for the purpose of promoting commerce from Atlantic and Gulf ports of the United States to the Far East by providing "just and economical cooperation between the steamship lines operating in such trades." All lines in the trade at that time became members of the conference with the exception of one American flag carrier, the Isthmian Line. This line, however, did not underquote conference rates. The scope of

this conference agreement has been modified from time to time but at present the term "Far East" as used in this agreement includes Japan, Korea, Formosa, Siberia, Manchuria, China, Hongkong, Indo-China, and the Philippine Islands. For some time there has been practically no competition by tramps.

Shortly after the formation of this conference the Pacific Westbound Conference, a similar voluntary association, was formed by steamship companies operating from Pacific Coast ports to the Far East. To prevent destructive competition between each other these two conferences entered into an agreement known as the "Overland Agreement", which provided that rates on commodities originating in the interior of the United States and capable of moving either through Atlantic or Pacific ports should be fixed by joint action of the two conferences. As a result of these three agreements, rates to the Far East from all ports of the United States became stabilized, except rates from the Pacific northwest on commodities of local origin, where both nonconference carriers and tramps were numerous.

From the Atlantic Coast these stabilized conditions continued until June 1928, when Isbrandtsen-Moller Company, operating foreign-flag tonnage, entered the Atlantic-Far East Trade and immediately began cutting the established conference rates. The Far East Conference endeavored to meet this competition but was handicapped because of the Overland Agreement, under which it was necessary to obtain the concurrence of the Pacific Westbound Conference before rate reductions could be made on commodities originating in the interior of the United States. Because of this Isbrandtsen-Moller competition, therefore, the Overland Agreement was terminated in 1930. This step, however, proved inadequate, and on May 6, 1931, in order to more effectively meet Isbrandtsen-Moller's competition, four foreign-flag lines¹ withdrew from the Far East Conference. With the withdrawal of these lines the conference virtually ceased to function. The chaotic conditions which followed demoralized the trade. On September 24, 1931, three of these four lines rejoined the conference with the understanding that within sixty days there would be drawn up a "scheme of rationalization in the form of a cargo pool or other plan", to prevent over-tonnaging. Ellerman & Bucknall Steamship Company, the line which did not rejoin the conference, insisted upon a specific form of rationalization—a pool, or else a rate differential in its favor. Despite many attempts to find an acceptable plan of rationalization nothing was accomplished. The three lines which had rejoined the conference, however, continued in membership.

¹ Blue Funnel, Prince Line, Bank Line, and Ellerman & Bucknall Steamship Company.
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In October 1931 Isbrandtsen-Moller informed the conference that "to effect a degree of order in quotations from the Atlantic Coast" it was willing to participate in a "satisfactory pooling agreement" which would involve a limitation in the number of its sailings and adherence to conference rates and practices. The president of the company stated, however, that in any arrangement with the conference he reserved the right to make his own arrangements with certain shippers to the Far East who had been his support in the past. The conference, believing that any such exceptions would involve the extending of unlawful preferential treatment to such shippers, rejected this reservation and the negotiations were discontinued.

It was alleged at the hearings that Isbrandtsen-Moller customarily affords certain shippers more favorable treatment than others. The president of the Barber Steamship Lines, one of the conference carriers, introduced in evidence a letter which he received in the latter part of 1931 from Hans Isbrandtsen, president of Isbrandtsen-Moller Company, in which the statement was made in connection with the possibility of reaching an agreement on rates: "We reserve freedom of action with shipments of Ford Motor Company. The same applies to paper, steel, plumbing supplies, and asbestos products. We do not intend to solicit accounts in these products not with us at this time." The witness who tendered this letter further testified that in connection therewith he had been informed orally by Mr. Isbrandtsen that "he intended to give lower rates to the shippers of those commodities who had been his supporters in the past during the term of any agreement that he might make with the conference, and during the said term for which he might make the agreement with the conference he would expect the conference to charge higher rates to all of the shippers of the same commodities." This witness added that Mr. Isbrandtsen had further stated he would not take any shipments from other manufacturers of the same products. As stated above, these negotiations came to naught.

On December 16, 1931, Ellerman & Bucknall rejoined the conference, but six months later, in an effort to force adoption of a rationalization plan or a rate differential, it again withdrew.

Ellerman & Bucknall's first sailing after this withdrawal was in July 1932. At this time, according to the record, it was the practice of Isbrandtsen-Moller to quote on most commodities 10 percent lower than conference rates. Witnesses for the conference carriers testified that shippers notified them of offers from Isbrandtsen-Moller to meet any reduction by the conference by quoting at all times 10 percent under the conference rates, and letters from shippers to that effect were introduced of record. Inasmuch as Isbrandtsen-Moller declined to participate in this investigation, although repre-

sentatives of the company were present at both the San Francisco and New York hearings, no tabulation of its specific rates is available. Ellerman & Bucknall, however, participated in the hearings, and considerable testimony was introduced by their agent in this country. The rates of Ellerman & Bucknall which are quoted in the tables below were furnished by this agent. They apparently were taken by him from ship's manifests, for this company neither published a tariff nor maintained a rate schedule, its rates being made from day to day at whatever level seemed necessary to get the business away from the conference carriers.

TABLE I.—Ocean freight rates on representative commodities from United States Atlantic ports to Far East as of July 1, 1932—Comparison Far East Conference rates with Ellerman & Bucknall Steamship Co. rates

[Rates are per 2,000 lbs. or 40 cu. ft. except where otherwise specified]

	Conference rates	Ellerman & Bucknall Steamship Co. rates
Automobiles.....	\$9.00	\$8.00
Agricultural implements.....	12.00	8.00
Canned goods.....	16.00	8.00
Cereals.....	10.00	8.00
Cotton piece goods.....	14.00	10.00
Dyestuffs.....	10.00	9.00
Iron and steel bars and beams.....	4.50	1 4.50
Machinery.....	7.50	7.00
Newspapers, old.....	4.00	1 3.50
Paint.....	14.00	12.00
Photo material.....	14.00	12.00
Plumbing supplies.....	9.00	8.00
Soap.....	8.00	8.00
Talking machines.....	7.50	6.50
Tires and tubes (pneumatic).....	40.00	30.00

¹ Per 2,240 pounds.

TABLE II.—Ocean freight rates on representative commodities from United States Atlantic ports to Far East as of Sept. 1, 1932—Comparison Far East Conference rates with Ellerman & Bucknall Steamship Co. rates

[Rates are per 2,000 lbs. or 40 cu. ft. except where otherwise specified]

	Conference contract rates	Ellerman & Bucknall Steamship Co. rates
Automobiles.....	\$8.00	\$6.00
Agricultural implements.....	12.00	6.00
Canned goods.....	16.00	8.00
Cereals.....	10.00	4.00
Cotton piece goods.....	12.00	4.00
Dyestuffs.....	9.00	4.00
Iron and steel bars and beams.....	4.00	3.50
Machinery.....	7.50	4.00
Newspapers, old.....	1 4.00	1 3.50
Paint.....	12.00	8.00
Photo material.....	12.00	12.00
Plumbing supplies.....	9.00	8.00
Soap.....	10.00	6.00
Talking machines.....	7.50	4.00
Tires and tubes (pneumatic).....	40.00	25.00

¹ Per 2,240 pounds.

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TABLE III.—Ocean freight rates on representative commodities from United States Atlantic ports to Far East as of Dec. 1, 1933—Comparison Far East Conference rates with Ellerman & Bucknall Steamship Co. rates

[Rates are per 2,000 lbs. or 40 cu. ft. except where otherwise specified]

	Conference contract rates	Ellerman & Bucknall Steamship Co. rates
Automobiles.....	\$4.00	\$4.00
Agricultural implements.....	8.00	6.00
Canned goods.....	12.00	8.00
Cereals.....	10.00	4.00
Cotton piece goods.....	4.00	4.00
Dyestuffs.....	9.00	4.00
Iron and steel bars and beams.....	4.00	1 3.50
Machinery.....	4.00	4.00
Newspapers, old.....	1 3.50	1 3.50
Paint.....	12.00	6.00
Photo material.....	12.00	8.00
Plumbing supplies.....	8.00	6.00
Soap.....	5.00	4.00
Talking machines.....	4.00	4.00
Tires and tubes (pneumatic).....	40.00	25.00

¹ Per 2,240 pounds.

It will be noted that in Tables II and III the rates of the conference are headed "contract" rates. Prior to the collapse of the Far East Conference in 1931, it had been the practice of the conference to give on some commodities reduced or "contract" rates to all shippers, large or small, who agreed to give all their business for a period of one year to the conference carriers. Effective September 1, 1932, as a result of the combined competition of Isbrandtsen-Moller and Ellerman & Bucknall, the conference revived this contract rate system and extended it to practically all commodities. This move by the conference was countered by substantial additional cuts in rates by Ellerman & Bucknall as indicated in Table II.

The commodities covered in these tables have been selected as representative. The rates shown for Ellerman & Bucknall, however, must be taken as an approximation for, according to their agent, their rates varied from ship to ship—"they went up and they went down."

Isbrandtsen-Moller, according to written quotations introduced as evidence at the hearings, quoted specific rates 20 and 25 percent below the established contract rates of the conference, and in some instances made even greater cuts. Nothing of evidence indicates that Isbrandtsen-Moller was waging any fight for the adoption of a rationalization plan, as was the case with Ellerman & Bucknall. In fact, the preservation of the conference at remunerative rates was clearly in Isbrandtsen-Moller's best interests, inasmuch as it made it possible for it to fill its ships at the expense of the conference merely by maintaining a differential under the conference. At the hearings, Ellerman & Bucknall declined to state any of its rates for 1934, but

testified that they were higher than during 1933. Witness for this company acknowledged, however, that it had made quotations in the Atlantic/Far East trade on cotton piece goods for 1934 on a percentage basis under the Far East Conference. As will be set forth in this report in connection with the Pacific Coast/Far East trade, it is this company's current practice to make its rates from the Pacific Coast a fixed percentage under the rates of the conference in that trade.

The practices which have been outlined above all have to do with the cutting of freight rates. It was also testified at the hearings that Ellerman & Bucknall and Isbrandtsen-Moller pay more than the customary freight brokerage of $1\frac{1}{4}$ percent.

Two other nonconference carriers, the Isthmian Line and Mitsui Bussan Kaisha, operate from the Atlantic to the Far East but no complaint was made against them.

At the time Ellerman & Bucknall left the conference in 1932, its Far East service, which for some time had been via the Suez Canal, was rerouted via the Panama Canal, making it possible to add Pacific Coast ports to its itinerary. Other than this there have been no essential changes in services in this trade from 1932 to date. During this period fourteen carriers have been regularly engaged in the trade, ten of which have been operating as members of the Far East Conference with a total of approximately 200 sailings a year. Each of the four nonconference carriers has maintained an average of one sailing per month.

GULF/FAR EAST TRADE

When the Far East Conference was organized in 1922 under the auspices of the Emergency Fleet Corporation, United States Gulf ports were included within its scope, rates from these ports being established through a subcommittee located at New Orleans. This arrangement worked satisfactorily until 1929, when Reardon Smith & Co. began berthing occasional foreign flag steamers at cut rates. This rate cutting finally brought about the resignation of two lines from the conference, namely, the American Gulf Orient Line under the American flag, and the Fern Line under foreign flag. These two carriers do not operate from Atlantic ports to the Far East. Conditions have grown steadily worse until today the Far East Conference is practically inoperative from Gulf ports, and there are now more nonconference carriers than conference carriers. Rates on all commodities are unstable and have reached such low levels, according to one American flag carrier, that continued operation is possible only because good cargoes are obtained from the Far East.

PACIFIC/FAR EAST TRADE

Due to essential differences in the nature of the cargo moving, the Pacific/Far East trade must be considered as divided into two groups of services, one covering the trade from San Francisco and ports south, which will hereinafter be designated "the southern district"; and the other, trade from ports north of San Francisco, which will hereinafter be referred to as "the northern district." Traffic from the northern district, although including a substantial movement of miscellaneous cargo, consists for the greater part of grain, flour, lumber and lumber products, all of which move in sufficiently large parcels to attract tramps. The southern district is more particularly a general cargo trade and the service is almost entirely by liners. All of the American lines, and most of the foreign lines in the Pacific/Far East trade are members of, or by separate agreement observe the rates of, the Pacific Westbound Conference, a voluntary association formed "for the purpose of promoting commerce from, or via, the Pacific Coast ports of North America to the Far East for the common good of shippers and carriers by providing just and economical cooperation between the steamship lines operating in the trade." This conference was approved by the Shipping Board on June 26, 1923. The term "Far East" as used in this agreement today covers Japan, Korea, Formosa, Siberia, Manchuria, China, Hong-kong, Indo-China and the Philippine Islands.

From the southern district fourteen lines maintain regular service either as members or associate members² of the conference. Two of these, the Dollar Steamship Lines and the Oceanic & Oriental Navigation Company fly the American flag. From the formation of this conference in 1923 no important nonconference competition or tramp competition existed from this district until late in 1926 when the Kawasaki Kisen Kabushiki Kaisha, a foreign flag line commonly called the "K" Line, entered the trade. This line continued to operate as a nonconference carrier until 1932. A former employee of this line testified, on behalf of its present San Francisco agent, regarding its method of rate making during the period when it operated as a nonconference carrier. During that period the "K" Line had no tariff or rate schedule of its own, but secured a copy of the tariff of the Pacific Westbound Conference, adopting a general policy of quoting rates 10 percent under those contained therein. If, however, at any time it became difficult to fill a particular steamer on this basis the "K" Line would make still greater cuts under the conference until the scheduled sailing date of the vessel arrived. After the steamer had sailed, the rates of the "K" Line reverted to

² Lines observing conference rates under separate agreements.

the original 10 percent differential under those of the conference. The record shows that substantially this same method has been followed by other nonconference carriers in this and in other trades.

In 1929 Isbrandtsen-Moller entered this trade by diverting its Atlantic Coast steamers to Los Angeles en route to the Far East. According to the testimony of shippers Isbrandtsen-Moller customarily solicits business in this trade on the basis of rates 10 percent lower than those of the conference.

In 1932, when Ellerman & Bucknall resigned from the Atlantic/Far East Conference it rerouted its steamers via the Panama Canal instead of the Suez Canal. This enabled it to enter the Pacific/Far East trade—a trade in which it had not operated before—by adding Los Angeles to the itineraries of its Atlantic/Far East steamers. Later this service was extended to include San Francisco. On July 9, 1932, this company notified the Pacific Westbound Conference of its willingness to adhere to conference rates, rules, and regulations provided the conference would permit it to participate in contracts made by the conference with shippers. At this time three other carriers operating from the Atlantic Coast to the Far East and loading en route at Pacific Coast ports had similar arrangements with the conference. These three lines, however, were all members of the Far East Conference from the Atlantic. Ellerman & Bucknall not only was no longer a member of the Atlantic/Far East Conference, but, as already set forth in this report, by drastic rate cutting, was fighting that conference, which included in its membership these three lines as well as several lines who were also members of the Pacific Westbound Conference. The Pacific Westbound Conference rejected this offer of Ellerman & Bucknall and invited it instead to become a full member, which involved the posting of a \$25,000 bond to guarantee observance of the rates, rules, and conditions of the conference. The answer of Ellerman & Bucknall was the inauguration of a campaign of drastic rate cutting from the Pacific Coast, beginning with its first sailing in August 1932. Subsequently the conference offered to accept Ellerman & Bucknall's original proposition to adhere to conference rates if permitted to share in conference contracts. This offer was ignored, as were similar offers at later dates.

At the time of this investigation the rate policy of Ellerman & Bucknall in this trade as stated by its representative was as follows:

1. When conference rate is less than \$3 per ton reduce conference rate by 25 cents.
2. When conference rate is \$3 to \$5 per ton reduce conference rate by 20 percent to the nearest 25 cents.
3. When conference rate is \$5.20 to \$10 reduce conference rate by 25 percent to the nearest 25 cents.

4. When conference rate is \$10 and over reduce the conference rate by 30 percent to the nearest 25 cents.

5. Approximately a dozen commodities were named as exceptions to the foregoing with flat rates specified. These rates ranged from \$2.40 a ton to \$5 a ton.

Tables IV and V below list representative commodities moving from the southern district, and show the rates thereon of both Ellerman & Bucknall and the Pacific Westbound Conference as of August 1, 1932, and April 1, 1934, graphically illustrating the extent of the rate reductions brought about as a result of the rate-cutting campaign waged by Ellerman & Bucknall in this trade simultaneously with its rate-cutting campaign in the Atlantic/Far East trade.

TABLE IV.—Ocean freight rates on representative commodities from Pacific coast ports to Far East as of Aug. 1, 1932—Comparison Pacific Westbound Conference rates with Ellerman & Bucknall Steamship Co. rates

	Pacific Westbound Conference	Ellerman & Bucknall Steamship Co.
Bagging.....	1 \$12.00	1 \$9.00
Canned goods.....	2 14.00	1 10.00
Catsup.....	3 14.00
Dried fruit.....	3 14.00	1 10.00
Garbanzos.....	1 16.00	1 8.00
Kerosene (in cases).....	4 23	3 18
Machinery.....	5 7.50
Milk, canned.....	7.00	1 5.00
Newspapers, old.....	1 8.00	1 3.00
Paint.....	3 9.00	1 9.00
Rubber, scrap.....	1 5.00	1 4.00
Sardines.....	3 25

1 Rate is per 2,000 pounds.

2 Rate is per 2,000 pounds or 40 cubic feet whichever produces greater revenue.)

3 Per case.

TABLE V.—Ocean freight rates on representative commodities from Pacific Coast ports to Far East as of Apr. 1, 1934—Comparison Pacific Westbound Conference rates with Ellerman & Bucknall Steamship Co. rates

	Pacific Westbound Conference	Ellerman & Bucknall Steamship Co.
Bagging.....	1 \$4.00	1 \$4.00
Canned goods.....	1 5.00	1 5.00
Catsup.....	3 5.00	1 4.00
Dried fruit.....	3 5.00	3 5.00
Garbanzos.....	1 4.00	1 4.00
Kerosene (in cases).....	4 18	4 15
Machinery.....	3 6.00	2 4.50
Milk, canned.....	1 5.00	1 5.00
Newspapers, old.....	1 2.50	1 2.40
Paint.....	3 5.00	2 4.00
Rubber, scrap.....	1 2.50	1 2.50
Sardines.....	4 15	4 15

1 Rate is per 2,000 pounds.

2 Rate is per 2,000 pounds or 40 cubic feet whichever produces greater revenue.

3 Rate is per 40 cubic feet.

4 Per case.

The foregoing tables do not indicate all rate changes during the period of this rate war; they merely report rates as of August 1, 1932, when Ellerman and Bucknall began their rate-cutting campaign and rates as of April 1, 1934, which was immediately prior to the hearing at San Francisco.

In September 1932, the East Asiatic Company, under foreign flag, entered this trade. This company does not load on the Atlantic Coast but operates in the Pacific/Far East trade from both the northern and southern districts. It is one of the few nonconference carriers which actually has a freight tariff of its own. This tariff, however, is based on the Pacific Westbound Conference tariff, and its rates are usually from 10 to 15 percent lower than those of the conference. An official of this company testified that the East Asiatic Company had not joined the conference because of the cut-rate operations of other nonconference carriers; in addition he claimed that a rate differential in its favor is necessary. On some commodities, however, the East Asiatic Company has not followed reductions made by the conference in meeting the competition of Ellerman & Bucknall and Isbrandtsen-Moller.

At the time of the hearings, the fourteen members and associate members of the conference operating from the southern district faced competition from these three nonconference carriers: Isbrandtsen-Moller, Ellerman & Bucknall, and the East Asiatic Company. Rate conditions have been unstable since 1926 due to rate cutting by nonconference carriers, and since 1932 conditions have been demoralized.

From the northern district in the Pacific/Far East Trade ten lines maintain regular service as members of the Pacific Westbound Conference. Four of these are under the American flag. Severe competition by nonconference carriers has existed for the past ten years with the result that freight rates have been in a constant state of confusion. From time to time shippers have appealed to the conference to bring about stabilization. In 1925 lumber shippers purporting to represent 80 percent of the lumber mill production capacity in the Pacific Northwest asked the conference to cooperate in an effort to stabilize export rates on lumber. A committee of lumber shippers and carriers worked on this problem for some time but was finally forced to report that nothing could be "accomplished in the way of stabilization of lumber rates, owing to no control over nonconference lines and their destructive cut rates." From this district there are today five nonconference carriers, all of whom operate under foreign flags. One of these is the East Asiatic Company, which follows the same rate practices from this district as from the southern district. It is the practice of the other four non-

conference carriers to underquote the conference rates by whatever appears to be necessary to get the business, the degree of rate cutting varying on different commodities. In the words of the General Freight Agent of the American Mail Line, which flies the American flag, these carriers "use the conference rates as an umbrella to get the best rate they can. * * * There are a good many rates that by the time you pay your port out-of-pocket charges for getting the cargo into your ship leave very little for the carriage." The conference has been forced to declare rates open from this district on flour to Shanghai and Northern China; on wheat to Japan, Shanghai, and Northern China; on lumber, except hardwood, to Japan, Shanghai, and Northern China, and on wood pulp to all ports. Rates on all commodities in this district are in a constant state of uncertainty, and the commodities on which rates have been declared open are the principal export items from the Pacific Northwest.

ATLANTIC/UNITED KINGDOM AND EUROPE

In the various trades from Atlantic Coast ports to United Kingdom and Europe there are ten freight conferences, as follows:

- North Atlantic U. K. Freight Conference.
- North Atlantic Continental Freight Conference.
- North Atlantic French Atlantic Freight Conference.
- North Atlantic Baltic Freight Conference.
- North Atlantic/West Coast of Italy Conference.
- Adriatic, Black Sea, and Levant Conference.
- North Atlantic Spanish Conference.
- North Atlantic/French Mediterranean Conference.
- United States North Atlantic/Malta Freight Conference.
- South Atlantic Steamship Conference.

These are all voluntary associations, approved under Section 15 of the Shipping Act and formed for the purpose of stabilizing rates and conditions and promoting the export trade of this country. The membership of the ten conferences in these trades comprises twelve American flag lines and forty foreign flag lines. Many of these lines are members of more than one conference.

The only nonconference carriers specifically complained against at the hearings are Isbrandtsen-Moller Company and United States Navigation Company. Isbrandtsen-Moller's only eastbound trans-Atlantic service is from North Atlantic ports to Antwerp, Rotterdam, and Havre. The service of the United States Navigation Company is from New York to London, with a sailing approximately every three weeks. These two companies operate chartered foreign flag tonnage in these trades.

Isbrandtsen-Moller entered the North Atlantic/Antwerp, Rotterdam, and Havre trade in September 1931, with occasional sailings thereafter until February 1932, when the service was placed on a monthly basis. On the 1st of January 1934, its frequency was increased to two steamers a month. In this trade Isbrandtsen-Moller apparently operates without any tariff of its own, underquoting the conference rates by whatever seems necessary to get the business. Concerning Isbrandtsen-Moller's operations in this trade, the Traffic Manager of the American Diamond Lines, an American flag conference carrier in this trade, testified:

We did attempt to meet the competition, as we thought we had a perfect right to do. We found a situation where the traffic which we had been carrying was being lost to us because of rates 25 percent or more below us, and there was no means of knowing exactly what the rates were.

The net result of our attempt to meet that competition resulted in the following rate reductions—and let me say first, that we attempted to meet the competition by accepting cargo offered us at the competing freight rate of the Isbrandtsen-Moller interests, only to find that the freight rate, in the meeting of it, was immediately slashed still further and undercut still further, until we found that there was no bottom to the thing.

A statement submitted by this witness showed 168 rate reductions attributed to the rate cutting practices of Isbrandtsen-Moller. The majority of these reductions were at least 25 percent below the conference tariff and approximately one-third of them were reductions of over 40 percent.

The United States Navigation Company entered no appearances at any of the hearings, and the evidence regarding its practices is meager; however, according to witnesses of the conference carriers, the practices and methods of this carrier are substantially the same as Isbrandtsen-Moller's.

Concerning the competitive methods of both Isbrandtsen-Moller and the United States Navigation Company in these transatlantic trades, the traffic manager of one American flag carrier testified:

It is obviously impossible for American steamers to compete with these tactics, although I have sometimes felt that it would be wise for the United States Lines and the American Merchant Lines to cut loose from the conference and meet the nonconference lines on their own ground; but such action would be so costly, not only to ourselves but to other American flag conference lines that we have been reluctant to take this step. Furthermore, if we were to create a situation whereby we met the nonconference lines at every turn by reduction in rates, they probably would disappear from the picture temporarily and return again when rates became stabilized. It seems hopeless, therefore, for the conference lines, even with the highest principles of building up the commerce of the country and at the same time reasonably benefiting themselves, to correct this nonconference parasite; and our hope and prayer is that the Shipping Board will take some action that will bring about a situation that

is reasonable and just to the carrier and shipper and in the general interest of industry and commerce.

In none of these transatlantic trades have conditions as yet become as demoralized as in the Far East trade, but it is clear from the record that Isbrandtsen-Moller and the United States Navigation Company by means of their rate-cutting methods are filling their ships at the expense of the conference carriers who are endeavoring to stabilize the trade. In some of these trades there is no direct competition from nonconference carriers. However, the effects of these rate-cutting practices are not confined to the particular transatlantic trades in which such nonconference carriers are operating, as they carry cargo which is transshipped in the United Kingdom or Europe to other carriers, thereby participating on an indirect through route in competition with direct-line conference carriers. Their rate-cutting practices extend to such indirect through route movements and have a material effect upon the direct-line conference carriers.

GULF/UNITED KINGDOM AND EUROPE

Prior to the World War there were no conferences covering operations from the Gulf of Mexico to United Kingdom and European ports. Each carrier charged whatever seemed necessary to get the business; and the weaker lines consistently underquoted the only lines which attempted any regularity of service. Immediately after the close of the World War, under the auspices of the United States Shipping Board through its operating agency, the Emergency Fleet Corporation, freight conferences were formed to stabilize conditions in this trade. These conferences have continued, except for occasional interruptions, to the present and are now functioning as the following:

Gulf/United Kingdom Conference.

\Gulf/French Atlantic Hamburg Range Freight Conference.

Gulf/Mediterranean Ports Conference.

Each of these voluntary associations was formed for the stated purpose of promoting commerce in our Gulf export trade by providing just and economical cooperation between the carriers. All American flag carriers in these trades, five in number, are today members of the conferences, as are nearly all the foreign flag carriers. In recent years the conference carriers have furnished over 90 percent of all the space used for the movement of cargo from the Gulf to the United Kingdom and Continental Europe, and over 80 percent of all the space used to the Mediterranean.

The four principal nonconference carriers are the States Marine Corporation, the Gulf States Shipping Company, S. Sgitcovich &

Company and Vogemann-Goudriaan & Company. The first three of these operate chartered foreign-flag steamers. Vogemann-Goudriaan & Company operates its own ships under a foreign flag. Unlike some of the other trades, there is no evidence that the non-conference carriers in these trades make a practice of applying percentage reductions under the rates established by the conference. Not only do these carriers keep their rates as secret as possible, but ordinarily they do not schedule their steamers in advance. In the majority of instances they first book the nucleus for a shipload from a few of their regular patrons, who are the larger shippers in the trade, and if sufficient cargo is not secured in this way to fill the ship other cargo is taken at whatever rates are necessary to secure it. The ships of these carriers are usually booked full at less than conference rates before shippers generally know that such a vessel is being berthed. It is the contention of the conference carriers that this method of doing business results not only in discrimination between shippers as to rates but discrimination, particularly against small shippers, in the matter of space accommodations. The same contention is made by shippers.

As a general rule these nonconference carriers serve only New Orleans, Houston, and Galveston. To permit cargo to move with equal facility through all Gulf ports, the three conferences out of the Gulf to the United Kingdom and Europe have established the same rates from every Gulf port. Although the conference carriers endeavor to reduce rates promptly to meet nonconference competition, not only to protect themselves but to place all shippers on a competitive level, because of the secrecy with which nonconference carriers operate in quoting rates and berthing vessels such rate reductions frequently cannot be made in time to meet such competition. In many instances shippers located at Mobile have lost business because a competitor located at New Orleans, Houston, or Galveston has obtained rate concessions from the nonconference carriers, who usually do not serve Mobile and other east Gulf ports.

ATLANTIC/SOUTH AFRICA TRADE

There is only one American flag line in this trade, the American South African Line. It is a member of the South African Conference, approved by this Department, of which six foreign flag lines are also members. This conference was formed for the purpose of promoting commerce from United States Atlantic ports to South and East African ports. Under the conference agreement sailings are spaced at regular intervals. At the present time an average of four sailings a month is maintained, of which at least one sailing a month is guaranteed to the American flag line. There is only
1 U. S. S. B. B.

one nonconference carrier in the trade, the Baron Line, which uses foreign flag vessels with sailings once a month, and is operated by the United States Navigation Company. This carrier regularly underquotes the conference rates. According to the testimony of the President of the American South African Line, on many occasions the conference carriers have been forced to make drastic rate reductions in an effort to meet the competition of the Baron Line, without producing any increase in the total amount of cargo moving in this trade.

In addition to the services operated to South Africa by the members of this conference and the service of the Baron Line, there is a regular service from the Gulf of Mexico to South African ports on a monthly basis and a regular service from Canada to South Africa. Efforts have been made to secure a cooperative working arrangement between the members of this conference and these other lines to promote rate stability in the South African trade though the various gateways. The lines maintaining the Canadian and Gulf services, however, are stated to be unwilling to agree to maintain conference rates, owing to the rate-cutting policy of the Baron Line in the North Atlantic. Competition in the South African trade between Canadian and American manufacturers is keen and it was pointed out that

it would undoubtedly react to the benefit of the American exporter if he was assured that his Canadian competitor was paying the same ocean rate as himself. Under present conditions the American exporter is faced not only with not knowing what some of his American competitors are paying the Baron Line but is also at a loss regarding the rate being paid by his Canadian competitors.

As a general proposition the lines serving Canadian ports in other trades are members of the conferences in those trades operating from United States ports.

The conditions which have been set forth under the above six headings also exist, but to a less serious extent, in other of our export trades. At one time or another practically every one of our foreign trades has been affected by such practices. In recent years their use has become increasingly prevalent, due apparently to the growing realization by foreign flag operators of the vulnerability of our conferences, which, by the Shipping Act, 1916, are prohibited from using the deferred rebate system employed almost universally in the export trades of other countries as a protection against such competition. It is contended that

as the Shipping Act, 1916, took away the deferred rebate as a legal weapon of defense, so the Merchant Marine Act, 1920, has provided its legal substitute, namely, the appropriate rule or regulation by the Board to prevent cutthroat competition.

Both carriers and shippers testified that "cut rates" have not increased the total volume of our export commerce. Indeed, it was testified by several shippers that in some cases the cutting of rates has decreased the export movement because of the instability which resulted. Stability of rates and services is of vital importance to exporters in making quotations for our export markets, and both shippers and carriers pointed out that in most cases exporters from foreign countries competing in foreign markets against our exporters enjoy this much needed stability because of the conferences functioning in those trades. The use of these cut-rate methods prevents stability. Furthermore, their effect is cumulative, and sooner or later they result in complete demoralization of shipping conditions in the trades in which they are used.

Nonconference carriers employing these methods of competition have been sailing with well-filled ships during a period when conference carriers have been forced to sail with considerable empty space. Shippers who strongly favor the conference system testified to instances where they had switched their business from conference carriers to nonconference carriers, not because they considered the conference rates too high but because other United States exporters competing with them had taken advantage of the low nonconference rates and were using this advantage to undersell them. Conference carriers introduced figures showing loss of traffic to the nonconference carriers in a number of trades. In the cotton trade from the Gulf to the West Coast of Italy, for example, there was a total movement in the 1932-1933 season of 81,753 tons, of which the conference carriers carried 72,700 tons, or 89 percent against 9,053 tons, or 11 percent for the outside carriers. During the 1933-1934 season, out of a total movement of 71,819 tons the conference carriers obtained only 46,968 tons, or 65 percent, while outside carriers lifted 24,851 tons, or 35 percent. It is clear from the record that nonconference carriers are today filling their ships at the expense of conference carriers.

The serious effect upon the rate structure of these competitive methods of foreign flag nonconference carriers is well illustrated in its extreme form in Tables I to V of this report. It was testified on behalf of American flag operators, and foreign flag operators, that the level of rates reflected in those tables is unremunerative. Such rates are far below those prevailing from the principal competing European countries, as illustrated in the following table, compiled from Exhibit No. 104:

1 U. S. S. B. B.

TABLE VI.—Comparison of 1933 rates from United Kingdom to Manila with Far East Conference rates from United States Atlantic ports to Manila

	Contract rates from United Kingdom (rates apply per 40 cu. ft. or 20 cwt.) ¹	Far East conference contract rates from United States Atlantic ports (rates apply per 40 cu. ft. or 2,000 lbs. except where otherwise shown)
Agricultural implements.....	\$16. 10	\$8. 00
Automobiles.....	11. 60	6. 00
Canned goods.....	20. 70	12. 00
Cotton piece goods.....	12. 65	4. 00
Dyestuffs.....	14. 38	9. 00
Machinery.....	16. 10	4. 00
Newspapers, old.....	6. 33	² 3. 50
Refrigerators.....	18. 25	4. 00
Soap.....	11. 60	5. 00
Talking machines.....	20. 70	4. 00

¹ Rates based on exchange at \$4.00 to the pound sterling.

² Per 2,240 pounds.

Such rates as those generally prevailing in our Far East export trades are clearly insufficient to meet the cost to the carriers of loading and discharging the cargo³ and operating the ship, to say nothing of depreciation and overhead. In addition, the carriers operating from the Atlantic Coast to the Far East pay substantial Canal tolls.

Only four shippers appeared who in any way favored the nonconference carriers and only three of these have used nonconference carriers. All four desire stable rates but expressed the view that nonconference carriers act as "regulators" to prevent conferences from establishing rates at unduly high levels. However, in our export trades in which there is today no nonconference or tramp competition, neither these nor other shippers made any complaint as to conference rates and practices, but on the contrary shippers specifically testified with respect to two of the more important of those trades that the stable conditions brought about by the conferences have been very beneficial and that the conference carriers have not used the absence of outside competition to maintain rates prejudicial to our exporters. The right of this Department to disapprove any conference agreement found detrimental to the commerce of the United States, and the prohibition under Section 17 of the Shipping Act of rates unjustly prejudicial to exporters of the United States, as com-

³ One of the American flag carriers submitted figures showing a cost to the vessel for stevedoring on loading operations of approximately \$1.40 a ton, and a total cost of approximately \$2.30 a ton, to the ship at Pacific Coast ports before the vessel left its loading berth.

pared with their foreign competitors, afford protection against such abuses by a conference, apart from the self-interest of the conference carriers. Certainly the proper remedy for any unduly high rate is not cutthroat competition that wrecks the entire rate structure.

A long line of shipper witnesses, many of whom at one time or another have used nonconference carriers, appeared in support of the American flag lines' requests for the promulgation under Section 19 of rules and regulations which would end such cut-rate practices. Every such appearance was voluntary, as no subpoenas were issued. Practically all of these shippers have been engaged in the foreign trade of the United States for years and their testimony is, therefore, founded upon practical experience. If anything, these shippers were more emphatic than the carriers as to the need for stability.

To a great extent export sales are made on a c. i. f. basis. The representative of a large group of shippers of agricultural products testified:

We desire and must have stability in order to conduct our business in an orderly way. Our sales are made on a c. i. f. basis and sometimes sales are made months in advance for shipment months in advance.

What the lack of stability may mean under these circumstances was stated by a shipper of paints and varnishes:

In making a quotation c. i. f. you do not always secure the business immediately. It may be months before the business comes in actually as an order, and in the meantime possibly other shippers may have an opportunity to quote lower by securing a lower rate with the outside lines.

In order to protect the buyer c. i. f. prices must be maintained over a period of time. They cannot be revised to correspond with the fluctuations in freight rates which exist under the conditions described in this report. As the traffic manager of one of the large tire houses testified:

So far as our company is concerned, I believe it would be almost impossible to do business on anything but a stable basis. In the selling of tires prices are not made every day, nor are they sold on the basis of a certain number. Prices are set for a definite period, during which time there is no adjustment, and unless we have and do know that the freight rate situation is going to be stable, we cannot make a proper basis for arriving at a c. i. f. cost.

Practically all tire manufacturers are members of the Rubber Manufacturers' Association, whose Traffic Committee negotiates ocean freight rates with the various conferences. By presenting a united front and using conference carriers this particular industry has avoided rate instability. The fact that our exporters must compete with competitors located in other countries who have this much-needed stability because of the conferences operating from those

countries has already been touched upon. In the words of one shipper:

Our experience has been that it is very necessary for us to know exactly what our merchandise is going to cost in Manila, or Shanghai, or wherever the case may be. We find very keen competition from France, Belgium, and the United Kingdom, and even from Japan itself. So that we must know essentially what it is going to cost us to lay our merchandise down.

In this connection the general traffic manager of a large tire and rubber company testified:

With the competition existing in the rubber industry, with plants in foreign countries, such as Germany and Italy and England, and so forth, the difference in the price of tires is a very important item. Orders have been lost for a difference in price as low as one cent a tire. Stabilization of rates, in my opinion, is very essential, so that everyone in bidding on large contracts is using exactly the same steamship rates, and there are no secret rates which may have happened with an outside line, where one fellow may have one rate and somebody else may have a lower rate.

Among the many shippers who testified to the unfavorable repercussion on our foreign markets caused by instability of freight rates was the president of the National Lumber Exporters Association:

I think that I can say for the hardwood exporting interests that their principal interest is in stabilized rates; that is to say, rates which are uniform over a considerable period of time. The ideal situation would be to have ocean rates stabilized in the same manner that rates in the United States are on railways so that we can look upon them as being something that you can figure on for some time to come. * * * The constant fluctuation of rates has seriously injured the market for our goods abroad.

Another similar pertinent quotation from the testimony of the vice president of a large export house follows:

It has been our experience that instability of value; that is, uncertainty of prices, retards business. When we had a declining market here on a great many commodities, over a period of years, the buyer was constantly hesitating in placing orders, fearing a further decline in the market before the goods could be shipped or arrive. The same condition applies on freight rates. If there is instability of freight rates, say different lines are competing for business and solicitors offer inducement in the way of lower and constantly increasingly lower freight rates, we do not have stability in c. i. f. prices; you have no control of your price.

The need of equal rates for all shippers and the wide possibility of discrimination where cut-rate methods exist were emphasized by many shippers. As testified by the chairman of the Traffic Committee of the Dried Fruit Association of California:

We sell for shipment far in advance. That is one reason (for desiring stable rates). Another is that we know our competitors are on the same basis that we are. There is no chiseling on either side of the ocean and everyone is on a fair and equitable basis. We can proceed in a constructive way to market this large product of the State of California.

A representative of the Staple Cotton Cooperative Association, who also appeared on behalf of a number of Mississippi cotton interests testified:

Normally the cotton handled by these interests will be shipped approximately a third each to New England, to the Carolinas and the southeast, and exported, but in the past two or three years this has not been true insofar as the export trade is concerned, and it is the view of these interests that one of the principal factors affecting the curtailment of their export business has been what is known as the outside steamers coming in on short notice and soliciting cotton tonnage from the larger cotton shippers, the space not being available to the average shipper. We feel that because of this and because of these reduced rates at which the cargo was taken by the outside steamers, that in the majority of instances the cotton was sold at a basis that the average shipper was unable to compete with and as a direct result their export business has been seriously curtailed. It is the view of these interests that some degree of regulation should be made whereby ocean rates could be stabilized to some extent in order that all shippers of cotton, irrespective of their location, might have equal opportunity in the world markets.

Of similar tenor is the statement of an exporter of foodstuffs:

Where rates are stable it puts everyone on an equal basis and it makes for sounder business, because where the rates are not stable, in quoting prices to the Orient, which usually are c. i. f., no one knows what the other fellow is paying for freight and it creates a condition where there is instability at all times where you are quoting; and not only that, it leaves room for favoritism among certain shippers who perhaps have larger tonnage than the smaller shippers.

In the nature of things the nonconference carrier practicing these competitive methods can only accommodate a small minority of shippers, who, if they profit at all because of such methods do so at the expense of their competitors, who constitute the great majority of our exporters. Furthermore, although some of the nonconference carriers attempt to equalize rates for all shippers of the same commodity on the same vessel, their rates vary from ship to ship. The Shipping Act, 1916, prohibits unjustly discriminatory rates between shippers, and the giving to any particular person of any undue or unreasonable preference or advantage or the subjecting of any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The competition which a shipper faces is not limited to shipments moving on the same vessel with his shipment, and the possibilities of discriminations, preferences and prejudices are not removed by giving the same rates to all shippers of the same commodity on the same vessel.

Certain of the nonconference carriers have been charged with discriminating not only in the matter of rates but in the matter of space accommodations; and the testimony of shipper witnesses gives considerable substance to such allegations. The present investigation

is not the proper vehicle for considering violations of the Shipping Act, 1916, by individual carriers. It is not a complaint proceeding and no respondents have been named. It therefore seems inadvisable at this time to probe into specific violations of one or more of the regulatory provisions of the Shipping Act, 1916.

The fear was expressed by a number of shippers, and also by the conference carriers, that a continuation of the present competitive methods of nonconference carriers, which have already destroyed the rate structure in some trades, would seriously impair the efficiency of the regular services which the conference carriers maintain. Shippers testified to the imperative need for the adequate and dependable services which the conferences have built up. As explained by a shipper of roofing and other related materials:

I feel that the regular lines' service as established from Pacific Coast ports is the backbone of the American exporter to those countries, and that the invasion of the field by occasional or casual nonconference carriers has a tendency to break down rates. It has a tendency to encourage inferior service, and is a great handicap to American exporters selling commodities in an established market which can be invaded by competitors who use the nonconference lines at lower rates.

The need for regular services coupled with stable rates was well expressed by a lumber shipper:

It is necessary that we know that we are going to have steamers at certain times, at certain rates. We ship from a number of points in the interior, probably shipping from four or five points for a given steamer, and it is necessary that we know in advance that the steamer will sail at a certain time, to prepare the shipments. As I said before, it is necessary that we know at least sixty to ninety days ahead what those rates are going to be, and that we are going to have sailings at certain dates in order to fulfill orders that we have already taken for commitments abroad.

Another shipper testifying to the necessity for conference services stated:

In the matter of stability, if we were unable to use conference lines, with the service that they now render, a large part of the shipments we are now making from Rochester would of necessity be transferred to one of our other manufacturing plants. * * * in either Europe or, in the case of the Far East, our plant at Melbourne, Australia.

It is the history of merchant marines that where stability of rates exist, services become more regular and frequent, and faster ships are introduced with special equipment to serve the peculiar needs of individual trades. The testimony of shippers shows that such services are necessary to fill the needs of modern trade; but to make these improvements and maintain regular services, carriers must be able to count on a steady flow of commerce at stabilized rates. In the absence of these two closely related factors carriers cannot afford

to schedule sailings for definite dates in advance and at frequent and regular intervals.

The need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920, which states that it is necessary for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels. Section 7 of that Act directs this Department to investigate and determine what steamship services shall be established and the type, size, speed, and other requirements of vessels to be employed in such service, and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent services. The American-flag lines who have asked this Department to establish rules and regulations under Section 19 of the Merchant Marine Act were brought into existence as a result of this mandate from Congress. The ends sought by this legislation cannot be achieved and this policy will be defeated unless destructive methods of competition can be prevented.

After a prolonged investigation by a congressional committee, the conference system was legalized under the Shipping Act, 1916, to promote stability and prevent destructive competition between carriers. The advantages of the conference system were summarized in the report of this committee⁴ as follows:

Practically all steamship representatives who testified before the Committee, as well as a majority of the leading American exporting and importing firms who expressed their views on the subject to the Committee, contended that shipping agreements, conference relations, or oral understandings which steamship lines have effected among themselves in nearly every branch of our foreign trade are a natural evolution and are necessary if shippers are at all times to enjoy ample tonnage and efficient, frequent, and regular service at reasonable rates. Such agreements, it is contended, are a protection to both shipper and shipowner. To the shipper they insure desired stability of rates and the elimination of secret arrangements with competitors. To the shipowner they tend to secure a dependable return on the investment, thus enabling the lines to provide new facilities for the development of the trade. Furthermore, such agreements are held to furnish the means of taking care of the disabilities of the weaker lines, whereas unrestricted competition, based on the survival of the fittest, tends to restrict the development of the lines and in the end must result in monopoly.

The opinion was vigorously expressed by a number of carrier witnesses at the hearings during this Section 19 investigation that unless this nonconference competition is curbed a number of conferences will be forced to disband.

⁴ Committee on the Merchant Marine and Fisheries, House of Representatives, 62d Congress (Investigation of shipping combinations under House Resolution 587, Volume 4, page 295).

From the record in this investigation it is clear that there exist today and have existed in the past conditions unfavorable to shipping in the foreign trade arising out of and resulting from competitive methods employed by owners and/or operators of vessels of foreign countries, and that the effects of the world-wide depression upon our export trade have been intensified by these competitive methods. The following practices are hereby specifically condemned as unfair and detrimental to the commerce of the United States and the development of an adequate American merchant marine:

1. The solicitation or procurement of freight by offers 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.

To meet the conditions described in this report the Department "is authorized and directed" under Section 19 of the Merchant Marine Act "to make rules and regulations affecting shipping in the foreign trade." Individual American flag carriers and established, approved conferences have suggested various rules and regulations for our consideration. In form the suggested rules and regulations differ but in substance they are the same, and would require all common carriers by water to observe the freight rates established by conferences in our export trades. These suggestions have received careful consideration. Section 19 of the Merchant Marine Act, 1920, lays a mandate upon this Department to prescribe rules and regulations to meet conditions such as those shown by this investigation to exist. It is believed, however, that existing conditions can be corrected, at least to a considerable extent, by rules and regulations less drastic in nature and less restrictive of competition. For the present, therefore, the rules and regulations to be issued should merely require complete rate publicity in a manner that will afford equal opportunity to all shippers to avail themselves of such rates and full opportunity to competing carriers to meet such rates, without prejudice to any additional rules and regulations which may prove necessary.

Section 1 of the Shipping Act, 1916, excludes from the regulatory provisions of that Act every "cargo boat commonly called an ocean tramp." This exemption of tramps from the regulatory provisions of the 1916 Act does not place any limitation upon the Department in its promulgation of rules and regulations under Section 19 of the Merchant Marine Act, 1920. As defined earlier in this report a tramp is a carrier transporting on any one voyage cargo supplied by a single shipper only under a single charter party or contract of affreightment. The best example of such a carrier is the tanker.

The rules and regulations proposed under Section 19 of the Merchant Marine Act, 1920, exempt, for the present, the tramp as so defined for the reason that the evidence of record in this investigation does not show that competitive methods employed by such carriers in our export trades have produced conditions unfavorable to shipping. Much of the cargo lifted by these tramps is in bulk, therefore the proposed rules and regulations exempt transportation of cargo loaded and carried in bulk without mark or count.

As a result of this investigation the Department finds, in accordance with this report, that conditions unfavorable to shipping in the foreign trade exist arising out of and resulting from competitive methods and practices employed by owners and operators of foreign-flag ships. The U. S. Shipping Board Bureau recommended in its report of January 22d that the following order putting into effect rules and regulations effective sixty days after their promulgation be issued:

WHEREAS, The Department by order of the Secretary issued March 9, 1934, instituted a proceeding of investigation and inquiry for the purpose of determining whether conditions unfavorable to shipping in the foreign trade exist as a result of competitive methods and practices employed by owners, operators, agents, or masters of vessels of foreign countries, and for the further purpose of determining rules and regulations to be made under authority of Section 19 of the Merchant Marine Act, 1920, to adjust or meet such conditions if found to exist; and

WHEREAS, Pursuant to such order a full investigation has been made, and the Department on _____ has made a report finding that conditions unfavorable to shipping in the foreign trade to exist as a result of such competitive methods; now, therefore, the following rules and regulations are issued under Section 19 of the Merchant Marine Act of 1920:

1. Every carrier by water engaging in the transportation for hire of property from any port of continental United States, except Alaska and the Canal Zone, to any port of a foreign country or of the Philippine Islands, whether by direct route or by a through route in connection with another carrier or carriers shall file with the United States Shipping Board Bureau of the Department of Commerce a tariff showing all rates, charges, rules and regulations for or in connection with the transportation of such property, and shall make such filing at least thirty days prior to the commencement of loading of any vessel of such carrier with property to be so transported.

2. Every such carrier shall post and keep open to public inspection a copy of each tariff so filed by it, effective simultaneously with such filing, at each of its principal business offices at the United States ports from which its vessels operate, and no such transportation as above described shall be engaged in by any such carrier except in strict accordance with such rates, charges, rules and regulations so held out by it.

3. No change shall be made in any such rates, charges, rules, or regulations so filed and posted except by the filing and simultaneous posting as aforesaid upon thirty days' notice of amendments to such schedules.

4. Upon proper showing of an emergency or for other good cause shown the Department may permit changes to take effect prior to the filing and posting

of such amendments or by such filing and posting upon less than thirty days' notice, or make such other exceptions to these rules as may in its judgment be warranted.

5. The requirements of these rules and regulations shall not apply to the transportation of cargo loaded and carried in bulk without mark or count.

6. The requirements of these rules and regulations shall not apply to carriers transporting on any one voyage cargo supplied by a single shipper only under a single charter party or contract of affreightment.

These rules and regulations shall be effective on and after

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 carrier by water known to be engaged in the foreign trade of the United States and otherwise given all possible publicity.

The practices condemned in this report as unfair not only prevent the maintenance of a reasonable and stable rate structure, vital to the welfare of American shippers and American flag carriers, but they also open the door to violations of the regulatory provisions of the Shipping Act. The duty which the law places upon every common carrier to serve all members of the public upon equal terms has been evaded by many carriers subject to the Department's jurisdiction. The issuance of an order, terminating the secrecy which today surrounds the rates of carriers, will enable shippers and others injured by such violations to make more effective use of the remedial procedure established by the Shipping Act and our Rules of Practice.

BY THE SECRETARY OF COMMERCE :

The above report is substantially that prepared by the United States Shipping Board Bureau of this department. Exceptions thereto were filed by some of the parties. Only certain exceptions need be mentioned. Those filed on behalf of Ellerman & Bucknall Steamship Co., Ltd., and Norton, Lilly & Company show that after hearing in this case Ellerman & Bucknall Steamship Co., Ltd., joined the Far East Conference from the Atlantic Coast and entered into an agreement with Pacific Westbound Conference to adhere to the rates and participate in traffic of that conference. These and other exceptions filed refer to *Panama Refining Company v. Ryan*, 293 U. S. 388, decided January 7, 1935, and urge, in substance, that as Congress has not set up any restrictions or standard, the delegation of powers under section 19 of the Merchant Marine Act, 1920, transcends constitutional limits. Other exceptions filed urge that as the Shipping Act, 1916, does not specifically confer powers to require carriers by water in foreign commerce to file tariffs and adhere to them, such requirement cannot be imposed by this department in the guise of a rule or regulation. Exceptions filed by Board of Commissioners of the Port of New Orleans refer to legislation

pending in Congress granting additional powers over common carriers by water in foreign commerce, and urge that as the proposed legislation would amend section 19 by writing into the statute the rules recommended in the proposed report, no action should be taken in this proceeding until such legislation has been disposed of. Some of the exceptions filed urge the proposed rules, if adopted, will unduly interfere with tramp operations and will bring about an unduly rigid rate structure to the detriment of our commerce in markets where this country competes with other countries.

In view of the points raised in these exceptions, the rules and regulations recommended in the report of the United States Shipping Board Bureau issued on January 22d will not be promulgated at this time.

The purpose of this investigation was twofold: (1) to determine if conditions unfavorable to shipping in our foreign trade exist as the result of competitive methods and practices employed by owners, operators, agents, or masters of vessels of foreign countries; and (2) to determine what rules and regulations should be made under authority of section 19 of the Merchant Marine Act, 1920, to adjust or meet such conditions if found to exist. 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 sailings 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.

Section 16 of the Shipping Act, 1916, prohibits any common carrier by water, either alone or in conjunction with any other person, directly or indirectly, from allowing any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means. That section also prohibits any such carrier from making or giving any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or subjecting any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 17 of

that act prohibits carriers in foreign commerce from demanding, charging, or collecting any rate, or charge, which is unjustly discriminatory between shippers or ports, and requires every such carrier to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. These provisions of law place an obligation on every common carrier by water in foreign commerce to make its rates public and available on equal terms to all shippers. The conclusion is inescapable that the methods and practices hereinbefore condemned also result in giving undue and unreasonable preference to some shippers and in subjecting competing carriers to undue and unreasonable disadvantage.

There is clearly much need for stability in rates and shipping conditions in our foreign trade and for more adequate machinery to aid in enforcing the various regulatory provisions of the 1916 act. Although the rules and regulations originally recommended by the United States Shipping Board Bureau will not be promulgated at this time, the following rules, which should, to a large extent, adjust or meet conditions herein found to be unfavorable to shipping, will be issued, and the record held open for such further action as seems necessary:

(1) Every common carrier by water in foreign commerce shall file with the United States Shipping Board Bureau of this department schedules showing all the rates and charges for or in connection with 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 rate has been established with another carrier by water, all the rates and charges for or in connection with 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 at the time these rules become effective 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.

(3) 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.

The information called for by the foregoing rules will also be available to the public.

An appropriate order will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 179

APPLICATION OF RED STAR LINIE G. M. B. H. FOR MEMBERSHIP IN
NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE-AGREE-
MENTS 1456 AND 4490 AND CONFERENCE AGREEMENT 48

Submitted June 24, 1935. Decided August 27, 1935

Denial of application of Red Star Linie G. m. b. H. for membership in North Atlantic Continental Freight Conference found justified. Basis of denial removed by withdrawal of approval of agreement requiring Arnold Bernstein Line to carry only unboxed rolling material.

Abram L. Burbank, Cletus Keating, and Roger Siddall for Red Star Linie G. m. b. H.

J. Sinclair for North Atlantic Continental Freight Conference and Trans-Atlantic Associated Freight Conferences; Carver W. Wolfe and J. Newton Nash for Compagnie Maritime Belge (Lloyd Royal) S. A.; John W. Crandall, Lowell Wadmond and William Logan, Jr., for American Diamond Lines, Inc. and Black Diamond Steamship Corporation; J. E. Waldorf for Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft; C. O. Van Acheberg for Norddeutscher Lloyd; and Roscoe H. Hupper for N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij.

Thor Eckert for Red Star Steamship Company, Inc.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions to the proposed report of the examiner were filed by the parties and Compagnie Maritime Belge (Lloyd Royal) S. A. replied to those of Red Star Linie G. m. b. H. The question for determination is whether denial by North Atlantic Continental

Freight Conference of application of Red Star Linie G. m. b. H., organized under the laws of Germany, for membership in the conference is justified.

In 1920 certain common carriers by water operating between North Atlantic Coast ports of the United States and Canada and ports in France, Belgium, Holland and Germany, but not including German Baltic ports, members of three separate conferences, agreed to sit in conference as permitted by section 15 of the Shipping Act, 1916. Carriers operating to and from ports in France withdrew and a "second edition" of the agreement, which had been given conference agreement number 48, reorganizing the conference under the name of North Atlantic Continental Freight Conference, was received December 29, 1922, from the remaining lines, which in turn abandoned their respective conferences. This agreement was approved by the United States Shipping Board, the functions of which have been taken over by this department. It provided that all owners, agents of foreign owners having no establishment in the United States or Canada and lines duly authorized by the Board, operating steamers within the range of the conference, were eligible for membership in this conference. At time of hearing the conference was composed of American Diamond Lines, Inc., Baltimore Mail Steamship Company, Canadian Pacific Steamships, Ltd., Compagnie Maritime Belge (Lloyd Royal) S. A., Ellerman's Wilson Line New York Inc., Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft (Hamburg-American Line), Inter-Continental Transport Services, Ltd., N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland America Line), Norddeutscher Lloyd (North German Lloyd), Societe Anonyme de Navigation Belge Americaine, United States Lines Company, and Yankee Line. For reasons fully set forth in the proposed report of the examiner issued in the present proceeding it was impossible to determine whether it conformed to the requirements of law. Subsequent to the service of that report, the parties to the agreement, except Societe Anonyme de Navigation Belge Americaine, submitted a new agreement, which was approved by the department on August 24, 1935, as agreement No. 4490.

On May 20, 1931, the board approved an agreement, given agreement number 1456, submitted on behalf of American Diamond Lines, Compagnie Maritime Belge (Lloyd Royal) S. A., N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij, and Red Star Line, trade name of Societe Anonyme de Navigation Belge Americaine, on one hand, and Arnold Bernstein, on the other. Under an amendment to this agreement, confirmed by "Arnold Bernstein Line, Arnold Bernstein Steamship Co., Inc., Agents", approved by

the board January 18, 1933, the name of "Black Diamond Steamship Corporation (Black Diamond Lines)", was substituted in the place of "American Diamond Lines." Black Diamond Lines is owned by American Diamond Lines, Inc., the vessels of which it operates. The principal objects of this agreement, which is still in effect, are to avoid unreasonable competition, fix fair rates, and agree on matters incidental to proper conduct of the steamship trade. The following is taken from this agreement:

2. Arnold Bernstein Line will restrict its carryings to unboxed rolling material (automobiles, chassis, trucks, tractors and aeroplanes) and shall not carry any boxed material, or general cargo or any other cargo from or to the ports and/or countries herein named, and also agrees not to endeavor to expand its business beyond the approximate amount of its present volume to the detriment of the aforesaid Conference Lines.

3. Arnold Bernstein Line undertakes, as a rule, not to have more than three consolidated sailings per month, or at his option thirty-six consolidated sailings a year, from the United States of America and Canada to Antwerp, Rotterdam and Hamburg, or any other Belgian, Dutch or German port.

4. The total unboxed rolling material trade carried by all of the lines parties to this agreement to Antwerp and Rotterdam is to be divided between the Arnold Bernstein Line and the Conference Lines, on the basis of their respective sailings and carryings during the period from January 1st to April 30th, 1930, a surplus of 5% (five per cent) over their actual carryings being granted to the Conference Lines, but this surplus to be reduced or waived in the event of an abnormal decrease of the general movement of unboxed rolling material should present itself. From actual figures submitted re carryings during said period the percentages are as follows:

Conference Lines 44.95% (which includes the surplus of 5%)

Arnold Bernstein Line 55.05%

The total carryings of the Bernstein Line to Antwerp, Rotterdam and Hamburg combined or to any other ports in the above countries are limited to 15,000 vehicles yearly, on the present average measurement basis, as a maximum. The rate of freight for unboxed automobiles and other rolling material to Antwerp, Rotterdam and Hamburg, and arbitraries to the principal interior points in Europe, shall be fixed and determined by the parties from time to time by mutual agreement, and said rates so fixed shall be observed and adhered to by all parties.

* * * * *

7. All the lines interested in this agreement undertake to submit monthly carryings of unboxed material governed by this agreement in order to regularize the situation. As soon as the monthly statements reveal that the actual shares of the Conference Lines and the Arnold Bernstein Line are not in conformity with the percentages fixed, both parties will mutually take such steps, not inconsistent with the regulatory provisions of the Shipping Act, as to remedy the situation. These figures should be banded in not later than thirty days after the expiration of each month. The Conference Lines disposing of an official Secretary in turn, these figures could be submitted to the latter within the stipulated delay.

* * * * *

9. This agreement shall remain in force from January 1st to December 31st, 1931, and thereafter from January 1st, 1932 to December 31st, 1935, but subject

to the renewal of the agreement of the Antwerp/Rotterdam North Atlantic Freight Conference.

On June 6, 1933, the parties to agreement 1456 agreed to a change in the percentages provided in paragraph 4 thereof, retroactive to January 1, 1933. As a result of such modification, which was not submitted to the board for approval, Arnold Bernstein Line is now allowed 62.5 percent of the total unboxed rolling material transported to Antwerp and Rotterdam by all the lines to that agreement. In part settlement for undercarrying, presumably under paragraph 7 of the agreement, it has been paid slightly more than \$184,000 by the other contracting parties. As this sum is said not to be in excess of settlements that would have been made under the original agreement, the parties claim section 15 has not been violated. In November, 1934, Arnold Bernstein Line demanded its share of carryings be further increased to 70 percent. This was refused by the other parties. As the result of an agreement dated December 28, 1934, between Arnold Bernstein, International Mercantile Marine Company, and The Chemical Bank & Trust Company, Arnold Bernstein caused the organization of Red Star Linie G. m. b. H., which became possessed of steamships "Pennland" and "Westernland", at the time documented under the laws of Great Britain, and the goodwill and trade name of Red Star Line. Shortly after it was organized, this new company applied for membership in North Atlantic Continental Freight Conference. As its intention was to engage in the transportation of general cargo between points in the United States and Antwerp, carried out by the sailing of the "Pennland" from New York for Antwerp on March 12, 1935, with automobiles and general cargo, its application was denied by the conference upon opposition by Black Diamond Lines and Compagnie Maritime Belge (Lloyd Royal) S. A. which urged the provisions of agreement 1456.

The record shows Arnold Bernstein is a stockholder and director of Arnold Bernstein Line (Arnold Bernstein Schiffahrtsgesellschaft m. b. H), organized under the laws of Germany; that he caused the organization of Red Star Linie G. m. b. H., of which he is director and holder of 98 percent of the stock; that under the agreement of December 28, 1934, such company obligated itself to pay a certain sum of money to The Chemical Bank & Trust Company in part secured by the guarantee of Arnold Bernstein individually, who for that purpose pledged the entire capital stock of the company, and by the guarantee of Arnold Bernstein Line; and that dated February 8, 1935, Arnold Bernstein Steamship Company, Inc., organized under the laws of New York, of which Arnold Bernstein is the owner of the common stock, in letterhead of "Arnold Bernstein Line" and "Red Star Line" sent out a circular to the public stating, in part,

“Captain * * * received word today from Arnold Bernstein in Hamburg, Germany, confirming the purchase of the Red Star Line and its two ships the Westernland and Pennland by his company. * * * These two ships will augment our present fleet. * * * In addition to the two new boats, the three Bernstein liners * * * will continue in their regular service. * * * A proforma copy of the combined sailing schedule will be sent you the early part of next week with the Red Star Line rates. Larger office quarters are now being renovated just alongside of our present office to better accommodate our agents and clients.” There are other circumstances of record but these alone warrant treating Arnold Bernstein Line, Red Star Linie G. m. b. H., and Arnold Bernstein as one for the purposes of this case. Thus to lend approval to the application of Red Star Linie G. m. b. H., for membership in the conference as long as Arnold Bernstein Line, or Arnold Bernstein, is a party to agreement 1456, would be sanctioning two agreements under section 15 in conflict with each other, contrary to public policy.

In the light of all the facts and circumstances of record, it is clear, however, that agreement 1456 as approved by the board does not reflect the present understanding of the parties. As stated hereinabove the agreement was modified by the parties on June 6, 1933, retroactive to January 1, 1933, without approval as required by section 15. Although it is contended section 15 has not been violated because actual money transfers have not been made in excess of the amounts which would be called for under the provisions of the unapproved modification, the fact remains that the agreement as approved is neither a true copy nor a true and complete memorandum of the agreement between the parties as it has existed since June 6, 1933. Shortly after hearing a communication was received by the department from Arnold Bernstein Line requesting “that the attached minutes of the meeting of June 6, 1933, be filed with and approved by the Department of Commerce, United States Shipping Board Bureau.” The meeting referred to is the one at which the modification was agreed to. Such a request filed by only one party to the agreement, however, is not a proper filing under the requirements of section 15. Under the circumstances, approval of agreement 1456 will be withdrawn. The parties thereto will be expected to furnish the department, under oath, a full and complete statement of all carryings and payments made under this agreement from its inception up to and including such final settlement as is made.

The application of the Red Star Linie G. m. b. H. for membership in the conference was denied upon opposition by Black Diamond Lines and Compagnie Maritime Belge (Lloyd Royal) S. A., which

urged the provisions of agreement 1456. For reasons already set forth in this report this position was justified. Disapproval of agreement 1456, however, removes this barrier. It is not apparent from the record whether Red Star Linie G. m. b. H. is willing to join the conference as now existing under the agreement approved on August 24, 1935. If so, there will exist after the order in this proceeding, and upon the record now before the department no lawful reason for refusing its admission to membership.

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DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 193

INTERCOASTAL RATES TO AND FROM BERKELEY AND EMERYVILLE,
CALIFORNIA. (No. 2)

Submitted July 10, 1935. Decided August 28, 1935

Cancellation of joint rates maintained by McCormick Steamship Company and Berkeley Transportation Company for through inter-coastal transportation of property between Berkeley or Emeryville, Calif., and points on the Atlantic Coast found not justified. Suspended schedules ordered canceled and proceeding discontinued.

Joseph J. Geary for McCormick Steamship Company and certain other Panama Canal carriers.

C. S. Belsterling and *T. F. Lynch* for Isthmian Steamship Company.

Fred C. Hutchinson, Gwyn H. Baker, Harry M. Wade and *A. W. Brown* for protestants.

Edwin G. Wilcox, Frank M. Chandler and *Markel C. Baer* for interveners.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective May 25, 1935, McCormick Steamship Company proposed to cancel the joint rates at present maintained by it and Berkeley Transportation Company for through intercoastal transportation of property between Berkeley or Emeryville, Calif., and points on the Atlantic Coast. Upon protests filed by City of Berkeley, Berkeley Manufacturers Association, Berkeley Chamber of Commerce and The Paraffine Companies, Inc., the operation of the schedules was suspended until September 25, 1935. Oakland Chamber of Commerce, Board of Port Commissioners of City of Oakland, Certain-teed Products Corporation and members of Hard Surface Floor Covering Manufacturers Traffic Council intervened.

Transshipment of cargo under the rates sought to be canceled takes place at San Francisco, Calif. The establishment of such

rates was found justified by the department in *Intercoastal Rates to and from Berkeley, etc.*, 1 U. S. S. B. B. 365, decided March 5, 1935. The record in that case is stipulated into the record. The report there shows—

Berkeley, on the eastern shore of San Francisco Bay between Oakland and Richmond, Cal., is approximately 7 miles by water northeast of San Francisco. The only dock there available to shippers generally, known as the Berkeley Municipal Wharf, is leased by the City of Berkeley to Berkeley Port Terminal, Inc., a private organization. It is about 1.5 miles from outer Harbor Municipal Terminals at Oakland and approximately 4 miles from Richmond. Emeryville, also on the eastern shore of San Francisco Bay, is between Berkeley and Oakland. The only dock at this point, known as Emeryville Wharf, is owned by The Paraffine Companies, Inc., and is not available to other shippers. The water in front of these points is shallow. Soundings taken one week before the hearing showed the depth at Berkeley Municipal Wharf at low tide ranged from 5.4 to 8.3 feet, and at Emeryville Wharf at low tide from .3 to 2.4 feet.

Outbound shipments from Berkeley or Emeryville to points on the Atlantic Coast are switched or trucked to Oakland, or move by barges of Berkeley Transportation Company to San Francisco, at which points they are delivered to intercoastal carriers, including McCormick Steamship Company, for transportation beyond. There are no through arrangements or rates on shipments barged to San Francisco. These operations are reversed on inbound shipments. Inbound shipments also move to Berkeley by rail from San Francisco.

Industries located at Berkeley compete with industries at Oakland. The Paraffine Companies, Inc., manufactures paints, roofing, linoleum, and felt base floor covering at its plant at Emeryville. Its principal competitor in the distribution of its products in this general territory, except linoleum, is the Certain-teed Products Corporation with a plant at Richmond. Some of the raw materials used by both competitors are obtained from points on the Atlantic Coast. The Paraffine Companies, Inc., sells linoleum and other floor covering on the Atlantic Coast in competition with eastern manufacturers. Its inbound shipments of raw materials aggregate from 300 to 400 tons and its outbound shipments to eastern markets aggregate from 600 to 1,000 tons per month. The inbound shipments generally move through Oakland. When urgently needed they are barged direct from San Francisco. The outbound shipments are generally barged direct to that point. McCormick Steamship Company maintains intercoastal terminal rates from and to San Francisco, Oakland, and Richmond. It also participates in joint intercoastal rates from and to these points with certain San Francisco Bay carriers. Interchange of traffic with these carriers is made at San Francisco. The rates, whether terminal or joint, are the same from and to all these points. Under the proposed schedules joint intercoastal rates similar in amounts to those from and to these other points would apply from and to Berkeley or Emeryville.

Subsequent to the date of that decision, The Paraffine Companies, Inc. opened its wharf to the public.

Berkeley Transportation Company did not appear at the hearing. In support of the suspended schedules it was testified for McCormick Steamship Company that its desire to cancel the rates involved is due to a feeling on its part that to continue application of "terminal" rates to such places as Berkeley or Emeryville, which cannot be
1 U. S. S. B. B.

reached by its vessels because of insufficient water, was likely to place it in an embarrassing position. Also that continuance of these rates is not promotive of any substantial increase in its tonnage. The rates sought to be canceled are not terminal but joint rates. Furthermore what embarrassment the continuance of such rates will bring upon McCormick Steamship Company is not established of record. From an exhibit introduced by this respondent it appears no intercoastal shipments moved under the rates involved between March 9 and April 8, 1935, and that shipments moving thereunder between the last-mentioned date and June 8, 1935, aggregated only 219 tons. But the persuasive force of this exhibit is greatly lessened by the fact that McCormick Steamship Company asked interested shippers not to use its line, it having announced its intention to cancel its rates with Berkeley Transportation Company.

The record shows that in the event the joint rates are canceled, on intercoastal traffic from or to Berkeley or Emeryville shippers would be required to pay the combination composed of the rates of Berkeley Transportation Company and those of the connecting Canal carrier, which would result in charges higher than those under the joint rates.

Carriers are not required to establish joint through rates for intercoastal transportation, but when they voluntarily do so their cancellation depends upon whether or not such action violates any provision of law. Berkeley, Emeryville, Oakland and Richmond are nearby places. As has been shown, industries at Berkeley compete with industries at Oakland, and a large manufacturer of paints and other products at Emeryville obtains some of its raw materials from points on the Atlantic Coast and also markets some of its finished products in competition with a manufacturer at Richmond. Prior to March 5, 1935, McCormick Steamship Company maintained terminal rates and also joint rates with certain San Francisco Bay carriers, all similar in amounts, for intercoastal transportation from and to Oakland and Richmond. The purpose of the proceeding hereinbefore cited was to place Berkeley and Emeryville on a rate parity with Oakland and Richmond. This parity now exists and neither the facts presented nor the reasons advanced justify its disturbance. In view of the competitive situation the cancellation of the joint rates involved would result in undue and unreasonable preference and advantage to Oakland and Richmond, and shippers there located, and undue and unreasonable prejudice and disadvantage to Berkeley and Emeryville, and shippers, there located, in violation of section 16 of the Shipping Act, 1916.

The department finds that the suspended schedules have not been justified. An order will be entered requiring their cancellation and discontinuing the proceeding.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 174

IN RE AGREEMENT BETWEEN ERICSSON LINE, INC., AND PAN-ATLANTIC STEAMSHIP CORPORATION

Submitted July 16, 1935. Decided September 18, 1935

Agreement between Ericsson Line, Inc., and Pan-Atlantic Steamship Corporation for establishment of through routes and joint rates on general cargo between Baltimore, Md., New Orleans, La., Mobile, Ala., and Panama City, Fla., transshipped at Philadelphia, Pa., or Camden, N. J., approved.

Benn Barber, J. W. O. Von Herbulis, and C. C. Hake for Pan-Atlantic Steamship Corporation; S. A. Tubman for Ericsson Line, Inc.; John Sonderman for Mooremack Gulf Lines, Inc.; George Cohee for Charles Devlin & Company; Howard Shook for McCormick & Company; R. E. D. Mitchell for A. W. Sisk & Company; Charles F. Andrews for Emerson Drug Company; W. V. Brabham for S. Schapiro & Sons; C. F. Johnston for Locke Insulator Corporation; L. F. Klein, H. Franklin Sheehy, Randall J. Thompson, and R. B. Wallace for Moore & McCormack, Inc.; William E. Thirkel for Columbia Paper Bag Company; J. Frederick Roy.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Ericsson Line, Inc., and Pan-Atlantic Steamship Corporation filed exceptions to the first proposed report and petitioned for a rehearing, which was granted. No exceptions were filed to the report on rehearing proposed by the examiner.

Ericsson Line, Inc., and Pan-Atlantic Steamship Corporation, hereinafter collectively termed proponents and individually termed Ericsson and Pan-Atlantic, respectively, are common carriers by

water. The former has a daily service between Baltimore, Md., Philadelphia, Pa., and Camden, N. J.; and the latter has a weekly service between Philadelphia and Camden, on the one hand, and New Orleans, La., Mobile, Ala., and Panama City, Fla., on the other. By memorandum of agreement dated October 27, 1934, submitted for approval as required by section 15 of the Shipping Act, 1916, assigned United States Shipping Board Bureau Agreement No. 3634, proponents propose to establish through routes and joint rates for the transportation of general cargo between Baltimore and New Orleans, Mobile, and Panama City, with transshipment at Philadelphia or Camden. Mooremack Gulf Lines, Inc., hereinafter termed protestant, maintains a direct service between Baltimore and New Orleans, with transshipment at the latter port for traffic destined to Mobile, and protested the approval of the agreement. Protestant's southbound vessels call at Philadelphia after leaving Baltimore, and Ericsson, at protestant's request, often carries cargo from Baltimore to be loaded on protestant's ships at Philadelphia.

The agreement does not disclose the specific rates to be established, but provides that "through rates will be no less than those currently being quoted" between the ports named; and that on traffic moving via Philadelphia, Ericsson is to receive 14 cents per 100 pounds "on carload traffic rated fifth or sixth class or lower in Southern Classification", 18 cents per 100 pounds "on all other carload traffic, including consolidated less-than-carload traffic subject to a minimum weight of 30,000 pounds", and 25 cents per 100 pounds on less-than-carload shipments. Ericsson is also to receive its local dock-to-dock rates between Baltimore and Camden on traffic routed through the latter port. Transshipment expenses at Philadelphia are to be absorbed by Ericsson, and at Camden in equal parts by proponents.

Protestant claims that the net revenue accruing to Pan-Atlantic will be so low as to amount to ruthless competition. It was testified on behalf of proponents that Ericsson's rates from Baltimore to Philadelphia or Camden range from 9 cents to 38 cents per 100 pounds, and that under the joint rates proposed the balance of the through rates accruing to Pan-Atlantic on the various commodities range from 21 cents on canned goods to \$2.38 per 100 pounds on other commodities. Using canned goods as an example, Pan-Atlantic's net revenue is to be 16.75 cents per 100 pounds, or \$3.35 per ton. After deducting all expenses and charges incident to loading and discharging, there would remain a net figure of \$2.20 per ton. Protestant handles shipments from Baltimore destined to Mobile and Panama City, transshipped at New Orleans, upon which the line operating beyond New Orleans receives, on canned goods, 15

cents per 100 pounds, leaving a lower net revenue to protestant on such traffic than would accrue to Pan-Atlantic on shipments of canned goods from Baltimore to New Orleans.

The average time in transit of protestant's vessels from Baltimore to New Orleans is about 11½ days, whereas the average time for traffic moving by proponents' vessels, with transshipment at Camden or Philadelphia, would be about 7½ days.

The record does not show that the proposed through routes and joint rates will be detrimental to the commerce of the United States or in violation of the Shipping Act, 1916. An order discontinuing the proceeding and approving the agreement will be entered.

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DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 194

GULF INTERCOASTAL RATES TO AND FROM SAN DIEGO, CALIFORNIA

Submitted August 7, 1935. Decided September 24, 1935

Proposed increased rates for through intercoastal transportation between San Diego, Calif., and ports on the Gulf of Mexico found justified. Suspension order vacated and proceeding discontinued.

H. R. Kelly and *H. W. Hendrick* for respondents.

C. F. Reynolds for protestants.

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

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective May 30, 1935, and later dates, respondents proposed to make certain changes in the rates for through intercoastal transportation between San Diego, Calif., and ports on the Gulf of Mexico. Upon protests of Harbor Commission of City of San Diego, the operation of the schedules was suspended until September 30, 1935.

Tariffs of respondents Gulf Pacific Mail Line, Ltd., Luckenbach Gulf Steamship Company, Inc., and Swayne & Hoyt, Ltd. (Gulf Pacific Line), members of Gulf Intercoastal Conference, hereinafter designated Canal lines, name rates and charges for eastbound and westbound intercoastal transportation between ports on the Gulf of Mexico and ports on the Pacific coast, and identify San Diego as an outport, as distinguished from a terminal port. Under these tariffs the joint through rate, applying only on shipments moving on through bills of lading, will be the total of the commodity rate between ports on the Gulf of Mexico and Los Angeles Harbor, the port of transshipment, the rate between that harbor and San Diego,

named in the outport section of the respective tariffs, and enumerated terminal and transfer charges at Los Angeles Harbor. The other respondents, hereinafter designated Pacific coast carriers, are named as participating carriers in the tariffs and, with the exception of the California Steamship Company, which does not now operate, are members of the Pacific Coastwise Conference.

The schedules under suspension propose to eliminate from the outport section of the tariffs the present rate of 12.5 cents per 100 pounds on canned goods, any quantity, and the rate of 12.5 cents per 100 pounds on less-than-carload lots of pipe and fittings, thereby leaving a rate of 15 cents per 100 pounds, published in the "Freight N. O. S." item, to apply thereon. All other commodities, including carload lots of pipe and fittings, already take either the 15-cent rate or a higher rate.

The present rules relating to the transfer of cargo between docks of the Canal lines and docks of the Pacific coast carriers at Los Angeles Harbor provide for a truck tonnage charge of 5 cents per ton on all cargo transferred between docks, and a transfer charge between docks ranging from 75 cents to \$1.25 per ton, depending upon the location of the docks, subject to an additional provision that connecting carriers on eastbound traffic will deliver to, and on westbound traffic will call at, Canal lines' docks for minimum lots of 100 net tons of pipe and fittings, without charge, thereby rendering inapplicable the truck tonnage and transfer charges referred to. It was testified that note no. 5 of the suspended schedules would extend the application of the latter rule to lots of not less than 100 tons of any commodity, subject, however, to a charge of 40 cents per ton in lieu of the truck tonnage and transfer charges. On lots of less than 100 tons the truck tonnage and transfer charges are to remain in effect.

In support of the proposed changes a member of the Neutral Rate Committee of Pacific Coastwise Conference testified his committee had been instructed to study existing freight rates with a view to increasing them to meet increased operating expenses. Figures obtained by him showed that as to respondent McCormick Steamship Company, "the stevedoring of the coastwise cargo at Los Angeles Harbor for the first three months of 1935 over the first three months of 1934 increased 40.4 cents per ton and that the cost of fuel oil used by this company increased 41.5 percent. The report of the Pacific Steamship Lines, Ltd., comparing January 1935, with January 1934, showed an increase in the cost of fuel oil of 26.5 percent, an increase in stevedoring costs of 49 percent, an increase in crews' wages of 23.5 percent, and an increase in stores and provisions of 20 percent. The report of the Los Angeles Steamship Company

shows an average increase in the first four months of 1935, in comparison with the first four months of 1934, as follows: Stevedoring costs at Wilmington increased 52 percent, stevedoring costs at San Diego increased 42.75 percent and an increase of 17 percent in the provision item. An increase in the ship's pay roll, under the present wage schedule, of 20 percent is also reported." Effective June 17, 1935, the Railroad Commission of the State of California permitted certain increases in the intrastate rates of Pacific Coast carriers respondents here to meet increased operating expenses. The Canal lines offered no evidence in support of the increases in the joint rates, but relied solely on the needs of the Pacific coast carriers as justification for the proposed increases.

Protestants' witness testified that rates between Atlantic ports and San Diego were the same as the rates between Atlantic ports and Los Angeles and contended that the assessment of higher charges from and to San Diego on shipments from and to the Gulf unduly preferred shippers from and to the Atlantic coast and unduly prejudiced shippers from and to the Gulf. The record does not show that the members of the Gulf Intercoastal Conference in any way control the rates from and to the Atlantic coast.

Protestants also contend that on Gulf traffic the rate factors added to make through rates from and to outports adjacent to San Francisco, Calif., Seattle, Wash., and other ports located on the Pacific coast are less than the rate factors added to make through rates from and to San Diego. No evidence was submitted with respect to operating conditions at such other outports and the record will not support a finding with respect thereto.

The department finds that the suspended schedules have been justified. . An order will be entered vacating the suspension and discontinuing the proceeding.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 181

THE TAGIT CO.
v.

LUCKENBACH STEAMSHIP COMPANY, INC., ET AL.

Submitted August 31, 1935. Decided September 27, 1935

Complaint alleging rates for intercoastal transportation of laundry tags from Philadelphia, Pa., to Pacific coast ports are unjustly discriminatory dismissed for lack of prosecution.

No appearance for complainant.

R. H. Specker, A. L. Burbank, E. J. Martin, and B. Costello for respondents.

REPORT OF THE DEPARTMENT

The complaint alleges that the rates maintained by respondents for intercoastal transportation of laundry tags from Philadelphia Pa., to Seattle, Wash., Portland, Ore., San Francisco and Los Angeles, Calif., and other ports on the Pacific coast, are unjustly discriminatory, in violation of sections 16 and 18 of the Shipping Act, 1916.

Copy of the answer filed by each respondent, denying the allegation, was sent complainant. In due course the case was assigned for hearing. Thereafter and before the date of hearing, complainant informed the department it would not be represented at the hearing and expressed the hope the department would act on the information filed with it by complainant. No representative of complainant appeared at the hearing. 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, and it will be so ordered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 168

JOSEPH SINGER, INVESTIGATOR IN THE DIVISION OF LICENSES, DEPARTMENT OF STATE, STATE OF NEW YORK

v.

TRANS-ATLANTIC PASSENGER CONFERENCE ET AL.

Submitted November 13, 1935. Decided January 20, 1936

Refusal by member lines of Trans-Atlantic Passenger Conference to pay commissions to persons other than their authorized agents on passenger tickets and orders for transportation purchased for customers for passage on those lines between ports in the State of New York and foreign countries not shown to be unreasonably or unduly preferential or prejudicial. Complaint dismissed.

Abraham S. Wechsler and Joseph Singer for complainant.

John L. O'Donnell and Max J. Weiss for intervener.

Joseph Mayer for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

The proposed report of the examiner found that there had been no violation of the Shipping Act, 1916, and recommended that the complaint be dismissed. Exceptions to the proposed report were filed by complainant, but they do not show any errors of fact or law.

Article 10 of the General Business law of New York State forbids any person, firm, or corporation, other than railroad or steamship companies and their agents duly appointed in writing, to engage in the sale of steamship tickets and orders for transportation between that State and foreign countries unless a license therefor has been procured from the proper State authority.

The complaint, filed by an investigator in the Division of Licenses, Department of State, State of New York, in his official capacity,

alleges in substance that persons licensed under the State law, unless specifically appointed agents by defendant lines, are not paid commissions on passenger tickets and orders for transportation purchased for customers for passage on defendant lines between ports in the State of New York and foreign countries, which results in unjust and unfair discrimination, unreasonable prejudice and disadvantage to such persons, in violation of sections 14 and 16 of the Shipping Act, 1916.

A petition to intervene, the allegations of which were similar to those of the complaint, was filed by Therese Bernstein and granted.

Defendant lines are members of Trans-Atlantic Passenger Conference, a voluntary association which exists by virtue of Conference Agreement No. 120, approved February 12, 1929, in accordance with section 15 of the Shipping Act, 1916. One of the provisions of the agreement, as modified, is the following paragraph which was approved July 6, 1932:

ARTICLE E: (c) Sub-Agencies—i. e., agencies appointed by a Line on a commission basis for the sale of its passenger transportation. The number of such agencies shall be limited, reduced or increased, with due regard to the requirements of the traffic in such localities and on such bases as may be unanimously agreed upon. The member Lines in order to protect the public and to safeguard their own joint and several interests, shall adopt such rules and regulations as may be unanimously agreed upon to control the conditions of appointment and of cancellation of such agencies, the location of their offices and the scope of their activities, and to govern the relationship of the member Lines, jointly and severally, to such agencies. Such rules and regulations may include provisions for the payment of fees by and the bonding of agencies, the method of sale of passage tickets and orders and the prompt remittance of the proceeds thereof, the keeping and auditing of appropriate records and accounts, the return of unsold tickets and orders upon demand, the restriction of the agency relationship to member Lines only insofar as competitive non-member Lines are concerned, the control of the places and the addresses where the business of the agency may be transacted, the standards to be maintained in order to retain an agency including the minimum amount of business required to be transacted, the standards for advertising the sale of passage tickets, and any other matters relating to the conduct, maintenance and termination of the agency relationship. Violation of any such rule or regulation or default in the performance of any provision thereof by an agency with respect to any one or more of the member Lines, shall be deemed, if unanimously agreed upon, to have disqualified such agency as to all member Lines and the appointment of such agency shall then be cancelled and withdrawn simultaneously by all member Lines.

Application for agencies within the metropolitan area of New York City for the sale of passenger tickets and orders for transportation are made to defendants in an informal way. Thereafter a questionnaire is forwarded by the conference to the applicant, and with that goes an application for coverage under a blanket bond, the beneficiary of which is the chairman and secretary of the conference as

trustee for the member lines. The completed questionnaire, when received by the conference, is placed before what is known as the control committee. Unanimous approval by this committee is essential to being placed on a so-called eligible list, but such approval does not automatically make the applicant an agent. It rests with each individual line thereafter to decide whether it wants to name the applicant its own agent. Appointment by one line does not imply or require appointment by the other lines. Any line may cancel its agency without affecting the agency relationship of another line, but once an agency is in default to any particular line, all other lines must immediately cancel their connections, if any, with the defaulting agency.

In the selection of agencies the control committee ascertains such details as the business engaged in by the applicant, his address, whether the location is on the street level, and whether the applicant is in a condition and position to draw business. Much consideration is given to centers of foreign population, where it is most desirable that there be agencies familiar with the customs, habits, language, and "personal peculiarities" of the particular nationality. In passing upon an applicant's petition neither the conference as an entity nor any officer thereof has a vote. The conference agreement does not govern the appointment of agencies in those regions of New York State outside the metropolitan area of New York City.

Approximately 75 percent of the lines' passenger business comes from the various agencies, and the lines feel it is necessary to control such agencies in order to ensure protection to the public as well as to themselves. It is also necessary that the agency be kept supplied with literature and information on such subjects as governmental restrictions and regulations, travel conditions generally, and rates and fares abroad. Were supervision not maintained it is feared that conditions would become as chaotic as are said to have existed before the conference was formed. The lines cited instances where agencies had defaulted or had violated rules of the agency agreement. Under the license law of New York the licensee must furnish a bond in the sum of \$2,000, but in case of default the State does not help the aggrieved party obtain redress. Contrasted with this is the practice of defendants to bond every agency, sometimes as much as \$30,000, and always to protect the ticket purchaser regardless of the amount of the bond on the defaulting agency.

The testimony shows the lines are not interested in whether the applicant holds a State license; on the contrary, they endeavor to secure the appointment of trustworthy agents who can produce business in sufficient volume. The lines believe that the payment of commissions to all persons licensed under the New York law might

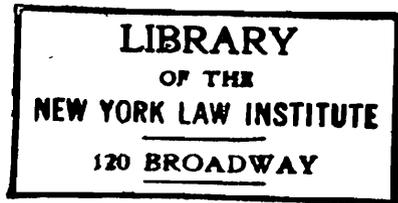
result in no one agency being able to secure enough business to justify its existence.

The relation of a ticket agent to its principal is of a fiduciary nature. As large sums of money are handled by these agents, the lines should be permitted all possible latitude in their appointment and supervision in order to ensure proper protection to themselves and to the public. No duty rests upon the lines to appoint all ticket sellers as their agents, and it does not appear that the public interest has suffered because of the lines' refusal to pay commissions to all licensees for tickets and orders purchased by them. *B. & W. Taxi Co. v. B. & Y. Taxi Co.*, 276 U. S. 518. The Shipping Act, 1916, was not intended as a substitute for the managerial judgment of carriers.

Upon the record the Department finds that the refusal by defendant lines to pay commissions to persons other than their authorized agents on passenger tickets and orders for transportation purchased for customers for passage on defendant lines between ports in the State of New York and foreign countries does not result in unreasonable or undue preference or prejudice to such persons under sections 14 and 16 of the Shipping Act, 1916. An order dismissing the complaint and discontinuing the proceeding will be entered.

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DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 168

JOSEPH SINGER, INVESTIGATOR IN THE DIVISION OF LICENSES,
DEPARTMENT OF STATE, STATE OF NEW YORK

v.

TRANS-ATLANTIC PASSENGER CONFERENCE, ET AL

ORDER

This proceeding having been duly heard, and full investigation of the matters and things involved having been had, and the Department, 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 be, and it is hereby, dismissed, and that this proceeding be, and it is hereby, discontinued.

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

JANUARY 20, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 294

GULF INTERCOASTAL CONTRACT RATES

Submitted November 20, 1935. Decided January 21, 1936

Proposed contract rate system for intercoastal transportation of certain commodities from points on the Gulf of Mexico to points on the Pacific Coast found not justified and unlawful. Suspended schedules ordered canceled.

Elisha Hanson and Frank Lyon for respondents.

Edmund J. Karr, J. E. Bishop, F. W. S. Locke, J. C. Stern, J. A. Stumpf, W. S. McPherson, A. D. Whittemore, J. A. Hart, C. J. Maley, W. M. Hatfield, Alfred H. Caterson, Jr., J. W. Jackson, G. A. Dundon, M. F. Chandler, J. P. Daly, E. M. Cole, J. K. Hiltner, Hugo Ignatius, H. W. Wagner, W. P. Rudrow, and Bernard Fabrikant for other interested parties.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective October 3, 1935, carriers parties to Agent Roberts' SB-I No. 3 proposed to establish and maintain rates for transportation of certain commodities from points on the Gulf of Mexico to points on the Pacific Coast, conditioned upon the execution of contracts by shippers, in the following form:

PROCEDURE IN CONNECTION WITH EXECUTION OF CONTRACTS AT CONTRACT RATES

(a) Where specific reference is made to this rule in individual commodity items in this tariff, the rates named in such items are contract rates and in the absence of contracts as provided for in this rule, the rates on such commodities will be ten cents per one hundred pounds or two dollars per ton of two thousand pounds higher than the rates named in such items.

Contract rates as provided herein may be secured by any shipper or consignee subject to joint execution by shipper or consignee on the one hand and the Gulf Intercoastal Conference for and on behalf of named carriers on the other of term contract, in the form indicated in Section (c) hereof, applying from specific ports of loading to specific ports of discharge, such contract signed by the shipper or consignee to be transmitted by him to the office of the Gulf Intercoastal Conference at New Orleans, Louisiana, or San Francisco, California, and to become effective on the date signed by Secretary of the Gulf Intercoastal Conference for and on behalf of named carriers. (Notice of acceptance and execution of contracts by Gulf Intercoastal Conference will be sent to the shipper or consignee by the Secretary of the Gulf Intercoastal Conference.) Where contract jointly executed as indicated above has not been made, the tariff, or non-contract rates shall apply.

(b) Contract rates named in individual commodity items in this tariff referring to Rule 53 expire with midnight of December 31, 1935, subject to orders of United States Shipping Board Bureau, Department of Commerce.

(c) MEMORANDUM OF AGREEMENT made this ----- day of -----, between -----, hereinafter called the shipper, and the several steamship lines undernamed, which constitute the Gulf Intercoastal Conference, hereinafter called the carriers, witnesseth:

1. THE SHIPPER, in consideration of the agreement of the CARRIERS hereinafter set forth, agrees to ship by steamers of the Gulf Intercoastal Conference lines, operating from the ports of

Beaumont, Texas	Mobile, Alabama
Houston, Texas	New Orleans, Louisiana
Lake Charles, Louisiana	

and other Gulf ports, all of the water-borne shipments which the SHIPPER shall make between the date hereof and -----, inclusive, from the aforementioned ports, and any and all other United States Gulf ports, to the following United States Pacific Coast terminal ports:

Alameda, California	San Francisco, California
Los Angeles Harbor, California	Seattle, Washington
Oakland, California	Tacoma, Washington
Portland, Oregon	

and all other Pacific Coast ports, subject to paragraph 6 hereof, of the commodities hereinafter described, quantities being estimated at approximately ----- carloads of ----- net tons.

The shipments contemplated in this clause shall include not only any such shipments made directly by the SHIPPER and in its name, but also any such shipments, however and by whomsoever made, if for the benefit and on behalf of the SHIPPER.

2. THE SHIPPER has the option of selecting, from such steamers of the CARRIERS as shall be operated from the port of shipment, the steamers upon which the shipments are to be made, subject, however, to mutual agreement between the CARRIERS so selected and the SHIPPER as to the quantity per steamer the port or ports of loading and port or ports of discharge.

The booking contract for the carriage of the commodities covered by this agreement is to be individually with the CARRIER specially agreeing to transport same, and not with the CARRIERS generally, and the shipment shall be subject to all the terms, conditions, and exceptions expressed in the freight contract, permits, dock receipts, mate's receipts, and regular form of bill of lading of the transporting CARRIER in use at the time of shipment.

3. In consideration of said agreement of the SHIPPER, the CARRIERS agree to transport from the loading ports specifically named above and from such other loading ports in the United States Gulf at which their steamers may call (provided space is available when application is made therefor), to the Pacific Coast Terminal ports of discharge above named all other United States and Canadian Pacific Coast ports for which cargo may be accepted, subject to paragraph 6 hereof, all of said shipments, and at the following rates by all CARRIERS named herein:

On commodities described in Items of the Gulf Intercoastal Conference Westbound Freight Tariff No. 1-B, SB-I No. 3, as amended or reissued, viz:

4. If the SHIPPER shall make any shipments in violation hereof, this agreement shall immediately become null and void as to all future shipments, and thereupon the SHIPPER shall be liable to the transporting CARRIERS for payment of additional freight on all commodities theretofore shipped with such CARRIERS since the execution of this agreement, in the amount of the difference between the tariff contract rate or rates and the tariff non-contract rate or rates of the transporting carriers in force on such commodities at the time of such shipment.

5. In applying the rate or rates named herein the date of sailing of steamer transporting the cargo from the port at which the cargo is loaded shall govern.

6. This contract is subject to the rules and regulations of the Gulf Intercoastal Conference Westbound Freight Tariff No. 1-B, SB-I No. 3, as amended and re-issued and in effect on the date hereof, and is also subject to any rules, regulations, and orders of the United States Shipping Board Bureau of the Department of Commerce now in effect or which may be put into effect during the term of this contract.

For and on behalf of the CARRIERS:

GULF PACIFIC LINE.

GULF PACIFIC MAIL LINE, LTD.

LUCKENBACH GULF STEAMSHIP COMPANY, INC.,

By GULF INTERCOASTAL CONFERENCE

By-----

(shipper)

By-----
(Address)-----

STATE OF LOUISIANA,

Parish of Orleans.

Before me, the undersigned authority, personally came and appeared C. Y. ROBERTS, Agent, who, being duly sworn, deposes, and says: That hereinabove is a true and correct copy of the form of contract or agreement to be jointly executed by shipper or consignee and the Gulf Intercoastal Conference for and on behalf of named carriers in order to permit application of contract rates as referred to herein.

(Signed) C. Y. ROBERTS, Agent.

Sworn to and subscribed before me this 31st day of August 1935.

[SEAL]

(Signed) LOUIS A. SCHWARTZ, Notary Public.

Upon application to the Gulf Intercoastal Conference, the following additional clause will be shown in contracts executed by a shipper having an affiliate which operates vessels and transports cargo to Pacific Coast ports to which rates named in this tariff apply:

Notwithstanding anything in this agreement to the contrary, it is understood and agreed by and between the parties hereto that Shipper may ship on vessels owned, chartered, managed, and/or controlled by any affiliate of Shipper, whenever such vessels are available, it being understood that for the purposes of this agreement "affiliate" shall be deemed to mean any company a majority of the outstanding stock of which is owned, held, or controlled by the corporation which owns, holds, or controls a majority of shipper's outstanding stock.

The proposed schedules were suspended until February 3, 1936. The Gulf Intercoastal Conference, to which the contract rule refers, exists by virtue of agreement approved under section 15 of the Shipping Act, 1916. It is composed of Luckenbach Gulf Steamship Company, Inc., Gulf Pacific Line, of which Swayne & Hoyt, Ltd. is the operating owner, and Gulf Pacific Mail Line, Ltd., of which Swayne & Hoyt, Ltd. is the managing agent. There are no other common carriers by water at present operating regularly through the Panama Canal in the transportation of general cargo from or to the Gulf.

The record in No. 126, *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, in so far as pertinent here, is stipulated into the record. That case involved a comprehensive investigation into intercoastal transportation. One of the orders entered therein required respondents here involved to discontinue the publication and maintenance of rates which accorded advantages in the westbound transportation of certain commodities to shippers who by written contracts obligated themselves to patronize respondents' lines exclusively in the westbound Gulf intercoastal transportation of such commodities. The contract rate system so condemned varied from the one now proposed only in form. The new rule and rates now under suspension were filed concurrently with other schedules which sought to comply with other orders issued in No. 126. To facilitate a determination as to the lawfulness of this new contract rate system, the department vacated its order condemning the contract rate system involved in No. 126, and at the same time respondents withdrew a petition filed in court attacking the validity of the earlier order. The present proceeding was then instituted.

Respondents first adopted a contract rate system in 1927. Such a system has been in force since that date except from July 1928 to February 1929 during which period the conference was disbanded. It has been and is the custom of respondents to make their contract rates expire on a date named, and to make contracts with shippers for limited periods. The contract period generally has been six months. Upon expiration of the contracts, contract rates are again established and new contracts executed.

No particular rule has been followed by respondents in the selection of the commodities on which contract rates apply. However, such commodities are generally characterized by their heavy and steady movement. The record shows that between January 1, 1934, and June 30, 1935, approximately 63.7 per cent of the total tonnage moving westbound in intercoastal commerce at port-to-port rates via the lines of respondents moved on basis of contract rates, and that over 99 per cent of the traffic in commodities on which contract rates were provided moved under contract rates. No contract rate system is used in the eastbound trade. The amount of 10 cents per 100 pounds, by which the proposed contract rates are lower than the non-contract rates, apparently was arbitrarily chosen by respondents. As explained by the principal witness of respondents:

A shipper who does not want to execute a contract to my mind must have a very good reason for that. The only reason I can conceive of for a shipper not wanting to execute a contract would be the fact that he wants to hold to himself the right to chisel or avail himself of any tramp steamer that may come along, and to take advantage of that lower rate. That being the case, he pays 10 cents per hundred for the privilege of holding himself out to patronize any cut-rate line that may come along.

The record shows that generally shippers who heretofore have executed rate contracts with respondents are satisfied with the contract rate system and urge its continuance. Only one of such shippers, and representatives of Sudden & Christenson (Arrow Line) and Nelson Steamship Company, common carriers by water engaged in intercoastal transportation between Atlantic and Pacific coasts, testified against the proposed rates and rule.

The reasons which gave rise to the adoption of a contract rate system are summarized by the principal witness for respondents as follows:

Shortly after the first service was started from the Gulf through the Panama Canal, several years after the inauguration of the Gulf Intercoastal service, the trade was seriously disrupted by vicious rate-cutting practices, resultant rate wars, and so forth, which condition proved not only very unsatisfactory to the steamship lines themselves, but also to the shippers.

This condition not only very seriously defeated the revenues of the steamship lines, but brought about very unstable conditions with shippers, due to the fact that they could not figure what their freight rate would be, nor what their competitors' freight rate would be. As a result of this, considerable thought was given as to what steps could be taken to bring about a stabilized condition both as to service and as to rates. This action was taken both on the part of the steamship lines themselves and at the request of various shippers. The result is what is now known as the contract rate system.

It is upon such benefit to the shippers and to themselves that respondents rely in justification of the suspended rates and rule. It should be remembered, however, that at the time referred to by

the witness, carriers engaged in intercoastal transportation were only required to file their maximum rates. Nothing in the law then in force prevented them from collecting compensation for their services lower than such maximum rates. The law at present in effect not only requires such carriers to file the rates which they charge for transportation, from which they are prohibited to depart, but also prescribes an orderly manner for changing the rates. This includes thirty days' notice to the public, and this department is given the power to suspend, upon complaint or upon its own initiative without complaint, any proposed change pending a hearing concerning its lawfulness.

Sudden & Christenson (Arrow Line) and Nelson Steamship Company object to the proposed rates and rule on the ground, as stated by a witness for one of these carriers, that "the contract system serves to create a monopoly in favor of the Gulf contract carriers." As stated in *Intercoastal Investigation, 1935, supra*:

* * * Furthermore carriers are not justified in attempting to restrict traffic to move over their lines. * * * The prohibition of discrimination means, among other things, that no difference or distinction shall be made in rates that coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business which under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor,

citing *Menacho v. Ward*, 27 Fed. 529, which was cited with approval in *Eden Mining Co. v. Bluefields Fruit & S. S. Co.*, 1 U. S. S. B. 41. Respondents there as here relied on *Rawleigh v. Stoomvaart et al.*, 1 U. S. S. B. 285. That case involved transportation in foreign commerce, and the decision therein has no controlling effect on a proceeding involving intercoastal transportation. As stated in the report in the *Intercoastal Investigation, 1935, supra*:

It is notorious that intercoastal transportation is not attended by many of the traffic and transportation circumstances attending transportation in foreign commerce * * *

In the *Rawleigh case* the evidence showed that the purpose and ultimate effect of the contract rate system as employed in that trade was to enable the carriers to approximate the volume of cargo that would move over their lines and to insure stability of rates and regularity of service. Operators of vessels in our foreign commerce may at any time and without warning be subjected to severe competition by tramp vessels of any nation. Unlike the intercoastal trade, there exists no statutory requirement that changes in rates be published thirty days in advance, nor is the department given any power to suspend such changes. In so far as ocean tramps in foreign commerce are concerned, they are subject to no regulatory authority whatsoever.

In the present case shippers are in effect given the choice of only two carriers, whereas in the *Rawleigh case* the contract rate system was neither in purpose nor effect monopolistic. Contract shippers, by the terms of their contracts, were afforded the services of at least eleven different carriers, including not only the members of the conference involved but also a non-conference line, the only other carrier in the trade. Furthermore, the record in that proceeding, unlike the record now before the department, indicates the willingness of the conference lines to admit other carriers into conference membership.

It should be understood that the department is not here sanctioning all contract rate systems in foreign commerce. Whether any such system is lawful is a question which must be determined by the facts in each case.

By law intercoastal carriers are forbidden 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 preference or disadvantage in any respect whatsoever. This department is given the power, either upon complaint or upon its own initiative without complaint, to enter upon a hearing concerning the lawfulness of any schedule stating a new individual or joint rate, or charge, or any new individual or joint classification, regulation, or practice affecting any rate or charge, and to suspend the operation of any such schedule for a period no longer than four months. Such provisions of law afford to shippers reasonable rate stability, and it is clear that the real purpose of the suspended rates and rule is to prevent shippers from using the lines of other carriers, and to discourage all others from attempting to engage in intercoastal transportation from and to the Gulf.

The department finds the contract system provided for in the schedules under suspension not justified by transportation conditions in the trade involved, and unduly and unreasonably preferential and prejudicial in violation of section 16 of the Shipping Act, 1916. An order will be entered requiring the cancellation of such schedules.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 294

GULF INTERCOASTAL CONTRACT RATES

ORDER

It appearing, That by Suspension Order No. 50, dated September 16, 1935, the Department entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules described in said order, and suspended the operation of said schedules until February 3, 1936; and

It further appearing, That a full investigation of the matters and things involved has been had, and that the Department, on the date hereof, has made and entered of record a report stating 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 February 3, 1936, upon not less than one day's posting and filing in the manner required by law, and that this proceeding be discontinued; and

It is further ordered, That the cancellations herein ordered may be made in a consecutively numbered supplement to Agent C. Y. Roberts' Tariff SB-I No. 3, without observing the requirements of the Department's tariff rules.

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

JANUARY 21, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 72

THE ATLANTIC REFINING COMPANY

v.

ELLERMAN & BUCKNAIL STEAMSHIP CO., LTD., ET AL.

Submitted December 6, 1935. Decided January 24, 1936

Issues presented by complaint having been voluntarily adjusted, and agreements alleged to be unlawful superseded by new agreements, complaint dismissed.

*R. Granville Curry and Frederick M. Dolan for complainant.
Clatus Keating and Roger Siddall for defendants.*

R. H. Horton for Port of Philadelphia Ocean Traffic Bureau; S. H. Williams for Philadelphia Chamber of Commerce; Charles P. Roeder for The Philadelphia Bourse; Walter W. McCoubrey for Boston Port Authority; Julius Henry Cohen, Wilbur LaRoe, Jr., and W. H. Connell for The Port of New York Authority, interveners.

REPORT OF THE DEPARTMENT ON REHEARING

BY THE SECRETARY OF COMMERCE:

This proceeding, reopened, involves issues discussed in a report of the United States Shipping Board, 1 U. S. S. B. 242. The complaint was dismissed by order of that board, issued December 14, 1932. Complainant alleged that rates held out to and charged by defendants on its shipments of petroleum products from Philadelphia, Pa., and New York, N. Y., to ports in South Africa higher than rates contemporaneously charged by them on shipments to the same ports of similar products shipped from New York by a competitor, the Vacuum Oil Company of South Africa, Limited, and/or Vacuum Oil Company, were unduly and unreasonably prejudicial

to it and unjustly discriminatory, in violation of sections 14, 16, and 17 of the Shipping Act, 1916. Reparation and lawful rates for the future were sought.

At the original hearing allegations of unlawfulness were made with respect to agreements filed by defendants and approved by the board as provided by section 15 of that act. Since the complaint contained no reference to the agreements the board held that issue was not properly before it for determination.

Upon petitions of complainant and the Port of Philadelphia Ocean Traffic Bureau, which amended the complaint to include issues under section 15 of the act, the case was reopened to consider the lawfulness of defendants' agreements and to reconsider the issues presented by the original complaint. The Boston Port Authority, Norfolk Port Traffic Commission, Philadelphia Chamber of Commerce and The Philadelphia Bourse intervened. After the case was reopened new agreements filed by defendants superseding those in effect were approved by the department. At the rehearing complainant testified that since January 1, 1933, rates charged on its shipments from New York were the same as those charged on shipments of its competitor from that port. Subsequent to rehearing complainant and defendants entered into an agreement whereby an equality of rates and conditions was established whether shipments move from New York or Philadelphia, in consideration of which complainant withdrew its claim for reparation, and joined with defendants in a petition filed of record November 20, 1935, requesting that the complaint be dismissed. The removal of the difference in rates to which the complaint was directed and the cancellation of the agreements attacked renders unnecessary further action by the department. An order dismissing the complaint will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 72

THE ATLANTIC REFINING COMPANY

v.

ELLERMAN & BUCKNALL STEAMSHIP CO., LTD., ET AL.

ORDER

This case, reopened upon petitions of complainant and the Port of Philadelphia Ocean Traffic Bureau, intervener, having been duly heard, and subsequent thereto, the issues involved having been voluntarily adjusted, and the entry of an order dismissing the complaint requested by complainant and defendants, and the department 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 as amended, be, and it is hereby, dismissed and this proceeding discontinued.

(Sgd.) DANIEL C. ROGER,
Secretary of Commerce.

JANUARY 24, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 171

IN RE GULF BROKERAGE AND FORWARDING AGREEMENTS

Submitted December 13, 1935. Decided February 19, 1936

Agreements between certain carriers by water in foreign commerce and other persons purporting to fix brokerage commissions and forwarding charges denied approval under section 15 of the Shipping Act, 1916, without prejudice to filing of new agreements as indicated. Proceeding discontinued

Walter Carroll for applicants.

J. M. Gloer, Jr., and *P. F. Cornwell* for Atlantic Cotton Association, protestant.

S. P. Gaillard, Jr., for Alabama State Docks Commission; *W. A. Olliff* for City of Panama City, Florida, and Chamber of Commerce of Panama City, Florida; *Frank A. Leffingwell* for Texas Industrial Traffic League; *Luther M. Walter*, *J. H. Beek*, *E. H. Thornton*, and *H. J. Wagner* for National Industrial Traffic League; *E. H. Hogueland* and *Frank A. Leffingwell* for Southwestern Millers' League; *T. C. Burwell* for A. E. Staley Manufacturing Company; *J. H. Raubman*, *C. A. Mitchell*, and *E. H. Thornton* for New Orleans Joint Traffic Bureau, interveners.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions to the report proposed by the examiner were filed by protestant and National Industrial Traffic League, to which applicants replied. The conclusions herein are in accord with the recommendations of such report.

This proceeding concerns ninety-two agreements¹ filed with the Department for approval under section 15 of the Shipping Act, 1916,

¹ Addenda Nos. 1 to 46 to U. S. Shipping Board Bureau Conference Agreement No. 140, and Addenda Nos. 1 to 46 to U. S. Shipping Board Bureau Conference Agreement No. 161.

by common carriers by water in foreign commerce who are members of the Gulf/United Kingdom or Gulf/French Atlantic Hamburg Range Freight Conferences, and other persons therein termed brokers. The agreements purport to fix the amounts of commissions the carriers are agreeable to pay such other persons for brokerage services, and also the amounts of the charges to be collected from shippers for forwarding services to be performed by the carriers and such other persons. Upon protest by Atlantic Cotton Association, a hearing was had. Alabama State Docks Commission, City of Panama City, Florida, Chamber of Commerce of Panama City, Florida, Texas Industrial Traffic League, National Industrial Traffic League, Southwestern Millers' League, A. E. Staley Manufacturing Company, and New Orleans Joint Traffic Bureau intervened.

Brokers are not subject to the Shipping Act, 1916, and consequently agreements between carriers subject to that act and brokers are not of the character required to be filed under section 15 thereof. However, if carriers enter into agreements with each other relating to their employment of brokers, such agreements must be submitted for the Department's consideration. The two conference agreements concerned already contain certain provisions relating to brokerage, and any additional agreements on this subject should be filed as modifications to such conference agreements.

Forwarders are subject to the Shipping Act, 1916, and consequently agreements between carriers and forwarders fall within the purview of section 15 thereof. The agreements under consideration, although fixing the minimum charges for forwarding services which the Brokers and carriers, when acting in the capacity of forwarders, will assess shippers, fail to set forth precisely what the contemplated forwarding services are. Such services are described as including "whatever is required to arrange the delivery from the inland carrier to the custody of the ocean carrier when the rail rate or charge as collected by the inland carrier does not cover that particular service." Some of the services referred to in the record as sometimes falling within the accepted meaning of forwarding as, for example, the filing of damage claims against themselves, and the issuance to themselves of letters of guarantee, are of a character which properly cannot be performed by common carriers.

The proposed agreements do not provide a charge for the issuance of ocean bills of lading by carriers, but testimony at the hearing is to the effect that charges will be made for the mere issuance by carriers of such bills. Under the Harter Act it is the duty of carriers to issue ocean bills of lading, or equivalent documents, as a part of their common carrier service. Agreements regulating charges made for forwarding probably are desirable, but if such

agreements are entered into they should state clearly the forwarding services covered and should not include charges by carriers for issuing ocean bills of lading or for performing other services which it is a carrier's duty to perform.

If the suggestions here made are followed, care should be taken both in the modification of the conference agreements and in the agreements covering forwarding services to keep brokerage activities and forwarding activities separate. Although it may be proper for carriers to refuse to pay brokerage to any broker who solicits for a competitor or receives brokerage from a competitor, the Department will not approve agreements under which the forwarder, whether also a broker or not, would refuse to handle as a forwarder shipments as to which routing by a competing carrier has been specified by the shipper.

In view of the above, the agreements filed cannot be approved. An order denying approval of the proposed agreements, without prejudice to the filing of new agreements as indicated, and discontinuing this proceeding, will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 171

IN RE GULF BROKERAGE AND FORWARDING AGREEMENTS

ORDER

This proceeding having been duly heard, and full investigation of the matters and things involved having been had, and the Department, on the date hereof, having made and entered of record a written report stating its conclusions and decisions thereon, which report is hereby made a part hereof;

It is ordered, That approval under section 15 of the Shipping Act, 1916, of the agreements concerned be, and it is hereby, denied, without prejudice to the filing of new agreements as indicated in said report; and that this proceeding be discontinued.

(Sgd). DANIEL C. ROPER,
Secretary of Commerce.

February 19, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 163¹

CANNERS LEAGUE OF CALIFORNIA
v.
ALAMEDA TRANSPORTATION COMPANY ET AL.

Submitted January 17, 1936. Decided February 19, 1936

Ground for allegations that intercoastal rates on canned goods were unlawful having been removed, complaints based thereon dismissed

Irving F. Lyons for complainant in No. 163 and *Fitz-Gerald Ames* for complainant in No. 178.

Joseph J. Geary and *Theodore M. Levy* for certain defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

These cases were consolidated for hearing and will be disposed of in one report. Exceptions to the report of the Examiner filed by complainants are discussed herein.

Complainants allege that the rate of 46.5 cents per 100 pounds, minimum weight 36,000 pounds, maintained by defendants other than Shepard Steamship Company for the transportation of canned fruits and other canned products, including animal food N. O. S., from points on the Pacific Coast to points on the Atlantic Coast of the United States, via the Panama Canal, was unjust and unreasonable as compared with the rate of 40 cents per 100 pounds, minimum weight, 24,000 pounds, contemporaneously maintained by the same defendants for the transportation of the same commodities in the opposite direction, in violation of section 18 of the Shipping Act, 1916; and that the 40-cent rate was unduly and unreasonably preferential in favor of competitors of complainants' members, in viola-

¹This report also embraces No. 178, *Pacific Coast Dog Food Manufacturers Association v. Alameda Transportation Company et al.*

tion of section 16 of said act. The prayer in each case is for the establishment of the same rate in both directions. At the hearing complainant in No. 178 withdrew the allegation of unreasonableness. The east-bound rate of Shepard Steamship Company was shown to be 45 cents per 100 pounds, minimum weight 36,000 pounds, and its west-bound rate was shown to be 38 cents per 100 pounds, minimum weight 24,000 pounds.

Subsequent to the hearing, but prior to the service of the Examiner's report, defendants other than Shepard Steamship Company filed new tariffs, effective October 3, 1935, which name the same rates for east-bound as for west-bound intercoastal transportation of the commodities involved. The report of the Examiner recommended that the complaints be dismissed, this action of defendants apparently having removed the ground for complaint.

Complainants filed exceptions contending that the proposal to dismiss the complaints against all defendants is unsupported by the record or the facts, and that as long as Shepard Steamship Company maintains a lower rate for west-bound than it does for east-bound transportation of canned goods, complainants are injured thereby, and this defendant's continuance of different rates exposes complainants to the danger of the reestablishment of alleged discriminatory west-bound rates on canned goods by all intercoastal carriers. Since the filing of the exceptions Shepard Steamship Company has filed tariffs to become effective March 11, 1936, which name the same rate for east-bound transportation of canned goods as is maintained by that carrier for west-bound transportation.

Reparation is not involved; the complaint in each case being based on the disparity in east-bound and west-bound rates between the same points. Since the rate situations complained of have been adjusted the questions presented are moot. If the new adjustment is changed by tariffs hereafter filed, the remedies provided by the Shipping Act, 1916, and Intercoastal Shipping Act, 1933, are available to complainants. An order dismissing the complaints and discontinuing the proceedings will be entered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 186

PORT OF PHILADELPHIA OCEAN TRAFFIC BUREAU

v.

THE EXPORT STEAMSHIP CORPORATION ET AL.

Submitted December 17, 1935. Decided March 18, 1936

Rates on general cargo and olive oil from Italian ports to Philadelphia, Pa., not shown to be unduly preferential or prejudicial, or unjustly discriminatory. Agreement governing The West Coast of Italy and Sicilian Ports/North Atlantic Range Conference not shown to be detrimental to the commerce of the United States or in violation of the Shipping Act, 1916. Complaint dismissed.

R. H. Horton for complainant.

Roscoe H. Hupper for defendants.

Walter W. McCoubrey for Boston Port Authority; *Charles R. Seal* for Baltimore Association of Commerce; and *H. J. Wagner* for Norfolk Port-Traffic Commission, interveners.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

The examiner's report recommending dismissal of the complaint was excepted to by complainant. The findings recommended by the examiner are adopted herein.

Complainant, a corporation existing under the laws of Pennsylvania, was organized for the purpose of maintaining and developing the commerce of the Port of Philadelphia. Defendants are common carriers by water in foreign commerce subject to the Shipping Act, 1916, and all are members of The West Coast of Italy and Sicilian Ports/North Atlantic Range Conference, U. S. Shipping Board Bureau Agreement No. 2846, approved March 23, 1934.

The complaint, as amended, alleges that the existing conference agreement, under which defendants provide on cargo from Italy higher rates to Philadelphia, Pa., than to New York, N. Y., and other North Atlantic ports, results in unlawful and unfair discrimination against the Port of Philadelphia and the shippers, importers, and receivers of freight located at or using that port; subjects that port and such shippers, importers, and receivers of freight to unjust and unreasonable prejudice and disadvantage; gives unjust and unreasonable preference and advantage to New York and other North Atlantic ports and to the shippers, importers, and receivers of freight located at or using such other ports; is detrimental to the commerce of the United States, and violates the Shipping Act, 1916. It prays that defendants be required to cease and desist from the aforementioned violations of law, that the agreement referred to be disapproved, and for such other and further relief as may be deemed proper.

The Boston Port Authority, Baltimore Association of Commerce, and Norfolk Port-Traffic Commission intervened.

The conference tariff, filed with this Department, was identified and made a part of the record. The title page thereof describes it as Freight Tariff No. 1, effective August 1, 1934, applying from ship-side to shipside by direct steamer from Genoa, Leghorn, Naples, Catania, Messina, and Palermo to New York and Boston. A note on page 95 states "Surcharges to Philadelphia and Baltimore, to be arranged." The tariff rates are divided into three categories according to the class of service. Those in the first category apply on traffic moving in the passenger vessels *Rex* and *Conte di Savoia*, those in the second category apply on traffic moving in the so-called combination passenger and freight vessels, and those in the third category apply on traffic moving in cargo vessels.

Traffic destined to Philadelphia is transported by defendants only in cargo vessels, which call first at New York. With this service it takes approximately eight days longer for cargo to be delivered at Philadelphia than at New York, and the service to Philadelphia is less frequent than the service to New York. Occasionally traffic destined to Philadelphia is transshipped at New York. The rate to Philadelphia is constructed by adding a surcharge of 65 cents per ton, or cubic meter, on general cargo, and \$1.30 per ton on olive oil, to the New York rate. A memorandum containing these surcharges, filed with this Department and made a part of the record, lists twenty-nine items on which no surcharge is assessed when destined to Philadelphia. These items comprise about 4 per cent of the total number of items in the tariff. The record is silent as to any movement of these commodities.

Under a previous tariff surcharges also applied on traffic destined to Boston, but apparently such charges were canceled when direct service was established to that port with combination passenger and cargo vessels coming within the second category under the existing tariff. The removal of the differential against Boston is relied upon to some extent by complainant as justification for the relief sought in behalf of Philadelphia, but the evidence does not show that the transportation conditions surrounding the two services are sufficiently similar to require like treatment. A witness for complainant testified that it was a general practice to accord the same rates on import and export traffic to all North Atlantic ports, but that, in addition to the situation here complained of, there are differentials against Philadelphia in certain other trades. There is no showing of competition with ports other than New York.

Complainant's witnesses testified, in substance, that the surcharges applicable on traffic to Philadelphia have caused diversion of import traffic from that port to New York, but no evidence of actual diversions was submitted. The record is replete with general statements and conclusions that the effect of the surcharges is to discourage the movement of commerce to Philadelphia and unduly favor New York, and that even in those cases where Philadelphia has an advantage in rail rates to interior points, the surcharges prevent merchants in some of these interior communities from doing business through the port of Philadelphia. However, there is no substantial evidence in support of these allegations.

A member of complainant's board of directors, secretary of the Philadelphia Bourse, an organization engaged in the promotion of commercial activities of Philadelphia and the State of Pennsylvania, testified that although he had heard of some complaints, only one was made to him personally. This dealt with the surcharge on olive oil, and was made by a retail chain-store organization having concentration warehouses at Philadelphia and other points from which it distributes food products by truck to its stores within a limited area contiguous to each focal point of distribution. The witness stated that if this importer is forced to distribute from New York to points now served from Philadelphia it will be handicapped by increased operating costs, but admitted that in some instances it is advantageous to importers at Philadelphia to take delivery of goods at New York and distribute therefrom as a focal center. However, it was emphasized in this connection that where warehousing is involved, the cost of distribution through Philadelphia would be lower because the importers there have their own storage facilities. The witness had no definite knowledge of the volume of traffic moving under the as-sailed rates to Philadelphia as compared to traffic under the alleged

preferential rates to New York, but he conceded that to Philadelphia the volume would be "modest." This and other witnesses testified that the service to Philadelphia is inferior to that enjoyed by importers at New York, because it is slower and less frequent, notwithstanding the greater charge therefor. The record does not show that the surcharges have caused any changes to be made in the distribution of olive oil or any other commodities.

A Philadelphia customs house broker, appearing also as secretary of the Italian Wholesalers & Importers Association, testified that the surcharges on shipments destined to Philadelphia have tended to decrease his business as well as the business of the port and of those whose enterprise depends upon port activity; and that complaints have been made by importers at meetings of the association that they have lost business to New York importers because the latter are in a position to deliver goods in territory even where Philadelphia has an advantage in rail rates at the same cost, or, in many instances, at a lower cost. Testimony of like import was given by another Philadelphia customs house broker. Neither of these witnesses supported these general statements with any evidence showing actual loss of business to himself or to others.

Defendants offered no testimony.

It is well settled that the existence of unjust discrimination and undue prejudice and preference is a question of fact which must be clearly demonstrated by substantial proof. As a general rule there must be a definite showing that the difference in rates complained of is undue and unjust in that it actually operates to the real disadvantage of the complainant. In order to do this it is essential to reveal the specific effect of the rates on the flow of the traffic concerned and on the marketing of the commodities involved, and to disclose an existing and effective competitive relation between the prejudiced and preferred shipper, localities, or commodities. Furthermore, a pertinent inquiry is whether the alleged prejudice is the proximate cause of the disadvantage. Manifestly, the general representations made by witnesses for complainant do not afford convincing proof of the alleged disadvantages under which they and other interests at Philadelphia operate, or that the rate situation is solely responsible therefor. It may be that their conclusions are based on specific facts bearing upon the question of discrimination and prejudice, but the Department cannot accept such conclusions without an examination of the underlying facts upon which they are based, which facts are not of record in this proceeding.

The uniformity of treatment contemplated by the Shipping Act is a relative equality based on transportation conditions only. To justify an order compelling exact equality of rates a complainant must

show a substantial similarity in the conditions surrounding the transportation under the rates sought to be equalized. Among the factors to be considered are: The value of the service to the shipper; the interest of the carrier; the relative volume of traffic; the relative cost of the service; the competition as between carriers; and the advantages or disadvantages which inhere in the natural or acquired position of the shippers or localities concerned.

Complainant may be correct in contending that the value of the service to the shipper at New York is greater than to the shipper at Philadelphia, but in this instance it is due largely to the fact that New York is the first port of call. This fact emphasizes the geographical disadvantage of Philadelphia in so far as the route here concerned is involved. The dissimilarity also suggests another: namely, the cost of service. The lack of evidence on this point does not warrant the assumption that there is no difference in the cost of services to New York and Philadelphia. A dissimilarity of conditions with respect to volume of movement is admitted but there is no substantial evidence as to the existence or lack of carrier competition. Complainant's proof on the whole is not convincing that the transportation conditions surrounding the services to New York and Philadelphia are substantially similar.

For the reasons stated above, it is concluded further that the conference agreement under attack is not shown to be unlawful or detrimental to the commerce of the United States.

Upon this record the Department finds that the rates assailed are not shown to be unduly preferential or prejudicial, or unjustly discriminatory; and that the conference agreement under which defendants operate in this trade has not been shown to be detrimental to the commerce of the United States or to be in violation of the Shipping Act, 1916. An order dismissing the complaint will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 186

PORT OF PHILADELPHIA OCEAN TRAFFIC BUREAU

v.

THE EXPORT STEAMSHIP CORPORATION ET AL.

ORDER

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 Department having, on the date hereof, 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.

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

MARCH 18, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 156

CALIFORNIA PACKING CORPORATION

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

Submitted April 7, 1936. Decided May 13, 1936

Rate on canned coffee from Brooklyn, N. Y., to Pacific Coast ports not shown to be unreasonable or unduly prejudicial in violation of the Shipping Act, 1916. Complaint dismissed.

Irving F. Lyons for complainant.

Joseph J. Geary and *Theodore M. Levy* for defendants except Argonaut Steamship Line, Inc., and Isthmian Steamship Company.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE :

Exceptions were filed by complainant to the report proposed by the Examiner. The conclusions herein are in accord with the recommendations of such report.

Complainant is engaged in roasting and packing coffee at Brooklyn, N. Y. By complaint filed October 22, 1934, it alleges that the rate maintained by defendants for the transportation of ground roasted coffee, in tin cans, in boxes, from Brooklyn to Pacific Coast ports via the Panama Canal, is unjust, unreasonable, and unduly prejudicial. A lawful rate for the future and reparation are sought. Rates are stated in cents per 100 pounds.

Complainant relies upon the following facts: On June 1, 1933, defendants' westbound rate on canned coffee was increased from 55 cents plus 3 percent surcharge, minimum weight 20,000 pounds, to 75 cents plus surcharge. Effective March 21, 1934, this rate was

changed to 77.5 cents, surcharge eliminated, and the minimum weight increased to 24,000 pounds. This is the alleged unlawful rate. Effective May 23, 1934, the eastbound rate of 55 cents plus 3 percent surcharge, minimum weight 12,000 pounds, was changed to 56.5 cents per 100 pounds, surcharge eliminated, with no change in the minimum weight.

Defendants' explanation of the different rates for eastbound and westbound transportation of canned coffee is that different circumstances and competitive elements enter into the making of intercoastal rates, the amount of the rate depending largely upon point of origin or destination of the freight, or both. If either point is in the interior, cost of transportation to or from the port is considered. The westbound movement of canned coffee is strictly port-to-port, whereas a great portion of the shipments moving eastbound is destined to points, in some instances, as far inland as Detroit, Michigan. In reaching that territory, movement via intercoastal lines is largely water-and-rail. There are no through or proportional rates on this commodity in the eastbound intercoastal trade and therefore port-to-port rates are maintained which permit a maximum movement into the interior along with whatever movement there might be for consumption at Atlantic ports. For these reasons it was said "if our rate eastbound did not permit us to get coffee going beyond the Atlantic Coast ports of discharge to interior points, we would not handle as much coffee. Therefore, that rate produces a greater volume than it would if it were named strictly for a port-to-port movement."

In further support of the allegation of unreasonableness complainant shows westbound rates in effect upon a number of commodities lower than the rate on canned coffee. Its exhibit shows weights per cubic foot and revenue per cubic ton but no showing is made as to the volume of traffic, value, risk, or other conditions pertaining to transportation of the named commodities. Reference to these rates without a showing of similarity of transportation conditions does not prove unreasonableness of the higher rate on canned coffee.

One of complainant's exhibits is a statement, compiled from Panama Canal records, of the tonnage of coffee moving between Atlantic and Pacific ports during the calendar years 1933 and 1934, which shows the preponderance of the movement each year was westbound. From January through May 1933, an average of 265 tons moved each month; from June 1, when the rate was increased, through December 1933, the average was 266 tons. During 1934, the movement averaged 257 tons per month. The figures for the period September-December 1934, totaling 635 tons, represent complainant's tonnage exclusively, in explanation of which was testi-

mony that "it seems, from September 1934, some of the other people that have been shipping this roasted coffee out here discontinued, and these figures therefore represent the California Packing Corporation tonnage, from that date. Competition was so keen that it drove these other people out of the market, and they did not hope, like we did, to get back the difference in the freight rate by reparation." The identity of such other people, however, was not known and no figures showing complainant's annual shipments were put in evidence.

Illustrative shipments of complainant are of cases containing 12 one-pound cans, each case weighing $17\frac{1}{2}$ pounds. Complainant bears transportation charges and all of its coffee is sold on a delivered basis. Certain competitors maintain coffee roasting and packing plants on the Pacific coast. Wholesale prices of the leading brands are the same and complainant shows that subsequent to the increase in the westbound rate of approximately 3.7 cents on each case, the selling price of its coffee was reduced 12 cents a case, which reduction complainant described as "a competitive price feature" uninfluenced by the level of the intercoastal rate. Since the westbound rate was increased, complainant has absorbed the increase, asserting it is not possible to pass the 21-cent difference in freight rates on to the buyer. Commercial and economic conditions of this character, however, cannot be made the basis of a finding that carriers' rates are unlawful. Prejudice to one shipper, to be undue, must ordinarily be such that it shall be a source of positive advantage to another. The fact that western packers are accorded a lower rate on eastbound shipments of canned coffee than complainant pays on like shipments westbound is not sufficient to sustain the allegation of unlawful prejudice. The evidence negatives any contention that complainant has been unduly prejudiced by the rate attacked.

Upon this record the Department finds that no violation of the Shipping Act, 1916, as alleged has been shown. An order dismissing the complaint and discontinuing the proceeding will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 156

CALIFORNIA PACKING CORPORATION

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

ORDER

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 Department, 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, and that this proceeding be discontinued.

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

MAY 13, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 164

CALIFORNIA PACKING CORPORATION

v.

STATES STEAMSHIP COMPANY, ET AL.

Submitted April 15, 1936, Decided May 13, 1936

Rates on canned grapefruit and grapefruit juice from Jacksonville and Tampa, Fla., to Pacific Coast ports, not shown to be in violation of the Shipping Act, 1916. Complaint dismissed.

Irving F. Lyons for complainant and interveners.

Joseph J. Geary and *Theodore M. Levy* for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

The Examiner's proposed report found there had been no violation of the Shipping Act, 1916, and recommended dismissal of the complaint. Exceptions were filed by complainant, but they show no errors of fact or law.

Complainant is engaged at Tampa, Fla., in canning and shipping grapefruit and grapefruit juice. Its complaint alleges that rates on those commodities from Jacksonville and Tampa to Pacific Coast ports via the Panama Canal are unduly preferential of Jacksonville and shippers therefrom and unduly prejudicial to complainant and the locality of Tampa; also that rates of defendant Gulf Pacific Line (Swayne & Hoyt, Ltd., Managing Owners) are unjust and unreasonable. The Hills Brothers Company of Florida, Florida Grapefruit Canners Association and Tampa Chamber of Commerce, intervened in support of the relief sought.

The only intercoastal service between Tampa and Pacific coast ports is that of Gulf Pacific Line; it does not serve Atlantic ports. At the time of hearing the rate of this defendant was 46.5 cents per 100 pounds, minimum weight 24,000 pounds, to designated Pacific coast terminal ports, rates of 7 cents and 10 cents per 100 pounds in addition being applied to Stockton and Sacramento, respectively, in connection with local river lines. The rate of the other defendants, from Jacksonville, was 40 cents per 100 pounds, minimum weight 24,000 pounds, and applied to all Pacific coast ports, including Stockton and Sacramento.

Canned grapefruit and grapefruit juice shipped from Tampa are sold on the Pacific Coast in competition with the same products shipped from Jacksonville, the difference in freight rates generally being absorbed by packers in the Tampa district. Complainant did not know the origin of its competitors' products and could give no indication of the volume of grapefruit and grapefruit juice moving from Jacksonville. A witness for Gulf Pacific Line testified that twenty or twenty-one canners of grapefruit and grapefruit juice ship through Tampa, but he knew of only two shippers of any volume through Jacksonville. The record shows a material increase each year since 1929 in the volume of grapefruit transported from Tampa to the Pacific Coast by the Gulf Pacific Line and that complainant's shipments from Tampa in the 1933-1934 season exceeded by more than 23,000 cases its shipments during the previous season. In the same period shipments of The Hills Brothers Company from Tampa increased 8,500 cases.

Some evidence was submitted tending to show the difficulty of making sales, due to the necessity of absorbing the difference in rates from Jacksonville and Tampa and the arbitrariness of 7 and 10 cents, respectively, to Stockton and Sacramento. In two instances, where absorptions were not made, prospective sales to persons in Sacramento were lost. Complainant was unable to show whether sales were lost to competitors shipping from Jacksonville, Tampa, or other points.

No defendant serves both Tampa and Jacksonville and carriers serving one port have no voice in the establishment of rates from the other port. Undue prejudice under section 16 is not shown when the carriers serving the alleged preferred point do not serve or participate in routes from the alleged prejudiced point for the movement of the traffic involved.

Complainant's only evidence of the unreasonableness of Gulf Pacific Line's rates from Tampa is that the rate from Jacksonville was 40 cents. Defendants' witness testified that the 40-cent rate was a depressed rate established to meet competitive conditions existing

in the Atlantic-Pacific trade. With respect to the arbitraries added to make through rates to Stockton and Sacramento it was explained that such arbitraries were added on all traffic from Gulf ports; that any departure from this practice with respect to one commodity would break down the rate structure and make it necessary for the carriers to absorb the arbitraries on all commodities; and that the average rate on all commodities from Gulf ports was so low that the absorption of the arbitraries would not leave the carriers revenue which is compensatory. Comparison of rates of one carrier with rates of carriers in other trades is of little value in the absence of a showing of similarity of transportation conditions. Subsequent to the hearing the rates on canned grapefruit and grapefruit juice from Tampa to designated Pacific Coast terminal ports and the rate from Jacksonville to Pacific Coast ports were changed and are now at the same level. The grounds for complaint thus have been removed in so far as these commodities move to the named terminal ports.

The Department finds that the alleged violations of the Shipping Act, 1916, have not been shown. An order dismissing the complaint and discontinuing the proceeding will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 164

CALIFORNIA PACKING CORPORATION

v.

STATES STEAMSHIP COMPANY ET AL.

ORDER

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 Department, 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, and that this proceeding be discontinued.

[SEAL]

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

MAY 13, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 175

AMERICAN CARIBBEAN LINE, INC.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE, ET AL.

Submitted April 4, 1936. Decided May 13, 1936

Complainant's application for admission to membership in The Association of West India Trans-Atlantic Steam Ship Lines, "Islands" Section, not shown to be on equal terms with all other parties thereto as required by section 14a of the Shipping Act, 1916. Complaint dismissed.

Roscoe H. Hupper for complainant.

Geo. H. Terriberry, G. J. Moraillon, Manuel G. Casseres, and Hendrik S. Muller for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

The examiner's report recommending dismissal of the complaint was not excepted to. The findings recommended by the examiner are adopted herein.

Complainant is a common carrier by water and a citizen of the United States. Defendants are members of The Association of West India Trans-Atlantic Steam Ship Lines, "Islands" Section, herein-after called "the Association", a conference of foreign steamship lines engaged in the transportation of property between Europe and the Windward and Leeward West India Islands (St. Thomas and east thereof) and the Guianas.

By complaint filed February 6, 1935, it is alleged that complainant has been excluded from admission to the Association upon equal terms with all other parties thereto; that in respect to traffic between European ports and foreign ports in the West Indies and the

Guianas the Association has an arrangement for deferred rebates as defined in section 14 of the Shipping Act, 1916; and that the participation of defendants in the Association places them within the provisions of subsection (2) of section 14a of the Shipping Act, 1916. Complainant prays that if, after due hearing and investigation, it is found that any defendant is a party to any such combination, agreement, or understanding as defined in subsection (2) of section 14a of the Shipping Act, 1916, a certification of such fact shall thereupon be made to the Secretary of Commerce as therein provided.

Section 14a of the Shipping Act, 1916, reads as follows:.

The board upon its own initiative may, or upon complaint shall, after due notice to all parties in interest and hearing, determine whether any person, not a citizen of the United States and engaged in transportation by water of passengers or property—

- (1) Has violated any provision of section 14, or
- (2) Is a party to any combination, agreement, or understanding, express or implied, that involves in respect to transportation of passengers or property between foreign ports, deferred rebates or any other unfair practice designated in section 14, and that excludes from admission upon equal terms with all other parties thereto, a common carrier by water which is a citizen of the United States and which has applied for such admission.

If the board determines that any such person has violated any such provision or is a party to any such combination, agreement, or understanding, the board shall thereupon certify such fact to the Secretary of Commerce. The Secretary shall thereafter refuse such person the right of entry for any ship owned or operated by him or by any carrier directly or indirectly controlled by him, into any port of the United States, or any Territory, District, or possession thereof, until the board certifies that the violation has ceased or such combination, agreement, or understanding has been terminated.

It is admitted of record that the Association holds out to shippers between ports in Europe and foreign ports in the West Indies and the Guianas an arrangement for a deferred rebate as defined in section 14 of the Shipping Act, 1916. Although the Association agreement refers to St. Thomas, Virgin Islands, the deferred rebate arrangement does not apply to that Island and there is no allegation or showing that it is applied to traffic moving from or to any port of the United States or its possessions.

Complainant maintains a regular fortnightly service between New York, N. Y., and the Virgin, Windward, and Leeward Islands, and the Guianas. Complainant's service was started in October 1934, but it had a predecessor in the same trade. On October 10, 1934, complainant applied for membership in the Association, undertaking to maintain conference rates on cargo to and from European ports with transshipment at New York. A proposal by the Association that the application be amended to exclude traffic to and

from Great Britain was declined by complainant and thereafter, on or about December 6, 1934, the Association advised complainant that it was not prepared to extend affiliation to include traffic to and from Great Britain. The record shows that all members of the Association with the exception of defendant Thos. & Jas. Harrison (hereinafter called "Harrison Line") voted in favor of the admission of complainant to affiliated membership in the Association and by informal answer to the complaint, stipulated of record, reiterated their willingness to admit complainant to affiliated membership, but as the agreement governing the Association provides that "applicants for admission to the Association must be unanimously elected in order to obtain membership", the negative vote of the Harrison Line was sufficient to reject the application. The Harrison Line was the only defendant to file a formal answer to the complaint and stood alone at the hearing in defense of the denial of complainant's application. Its objections to the admission of complainant to membership in the Association are substantially as follows: (1) Complainant is not a regular line from Europe serving the West Indies across the Atlantic and, therefore, is not seeking membership in the Association upon equal terms with all other parties thereto; (2) the Harrison Line is concerned in the trade from Great Britain to the British West India Islands, and British Guiana, which trade is domestic in character; and (3) to bring another company into the trade would only serve to increase the existing redundancy of tonnage. This defendant also pleaded by supplemental answer and argued by brief that if section 14a of the Shipping Act, 1916, can, upon the facts in this case, be construed to require the Secretary of Commerce to refuse the defendant the right of entry for its ships into the ports of the United States, then said provision of law is void because it contravenes the terms of the Convention of Commerce and Navigation between the United States and Great Britain of July 3, 1815, and extensions thereof. In view of the findings herein, it is unnecessary to consider this question.

The record contains no reference to British law under which the trade between Great Britain and its possessions in the West Indies and the Guianas is reserved to British vessels, and the plea of redundancy of tonnage is not tenable under the provisions of law applicable to this case.

There remains for consideration the objection that complainant is not a regular line from Europe serving the West Indies across the Atlantic and, therefore, is not seeking membership in the Association upon equal terms with all other parties thereto. All lines in the Association are engaged in the trade between European ports and ports in the West Indies and the Guianas by direct transatlantic

service. The agreement provides that for outward cargo each member has the right to fix rates or freight "for its own proper sphere", and those rates are to be strictly observed by other members obtaining traffic from that sphere, either directly or indirectly. The record indicates there is an understanding that each member line will confine its operations to its particular sphere, but is permitted to handle traffic by transshipment between European terminal ports and between terminal ports in the Islands.

The position of defendant Harrison Line that the conference is limited to regular lines from Europe serving the West Indies by direct transatlantic service seems to be well taken. This position is not affected by the fact, relied upon by complainant, that in certain other conferences, associated for administrative purposes with the conference here involved, American lines maintaining transshipment service similar to that of complainant have been admitted to participation as affiliated members, with the Harrison Line voting in favor of such affiliation. The record shows that the relation between such other conferences and the conference involved in this proceeding involves nothing more than an association for the purpose of providing office space, clerical help, and a secretary, with division of the expense among the individual conferences. There is no showing as to the circumstances and conditions under which American lines were admitted to membership in the other conferences referred to, but it was testified that such admissions were acts of grace and not of necessity. It was testified further that the Association involved in this proceeding, during nineteen years existence, has never admitted to membership of any character any but carriers that actually carry transatlantic. The action taken by other conferences in regard to the admission of American lines cannot be regarded as precedents to support a finding that the action of the Association here complained of brings the defendants within the provisions of section 14a (2) of the Shipping Act.

Complainant does not operate any vessels in transatlantic service to and from European ports, but handles shipments to and from such ports on through bills of lading which provide for transshipment at New York. In such cases complainant's agent takes out a local bill of lading with the transatlantic line for the purpose of protecting complainant as to that part of the transportation. It was testified on behalf of complainant that all the steamship lines operating between Europe and New York are agreeable to accepting as the charge for their transportation service, a division of the through rate maintained by the Association for the direct line service. It should be noted, however, that none of these transatlantic lines has joined with complainant in applying for membership in the Association. Com-

plainant desires, as an affiliated member of the Association, to afford a transshipment service between the West Indies and all European ports via New York, using any transatlantic carriers that may be operating between New York and such European ports. The transatlantic portion of the transshipment route between Europe and the West Indies represents in the neighborhood of two-thirds of the entire route, using as a basis for this comparison distances stipulated of record as follows: London to New York, 3,301 miles; New York to St. Kitts, 1,540 miles. It is also of interest to compare this transshipment route of 4,841 miles with the direct route of 3,802 miles also stipulated of record.

Complainant's application for admission to the Association is based on the participation of a number of undisclosed transatlantic lines in a transshipment route substantially longer than the direct route observed by conference lines, with no restriction as to sphere of operations at European terminal ports. The members of the Association operate direct transatlantic services with some limitation of sphere for each line at European ports. Such application therefore is not for admission on equal terms with the members of the Association in accordance with the letter and spirit of the agreement as shown by the record in this proceeding.

Complainant has failed to show that it has been excluded from admission to the Association upon equal terms with all other parties thereto and, therefore, is not entitled to the relief prayed for. An order dismissing the complaint will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 175

AMERICAN CARIBBEAN LINE, INC.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE ET AL.

ORDER

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 Department having, on the date hereof, 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.

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

MAY 13, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 370

GULF WESTBOUND INTERCOASTAL SOYA BEAN OIL MEAL RATES

Submitted May 13, 1936. Decided June 6, 1936

Proposed increased rate on soya bean oil meal from Gulf ports to Pacific Coast ports, found justified. Order of suspension vacated and proceeding discontinued.

M. G. de Quevedo and *Elisha Hanson* for respondents.

W. M. Carney for carriers supporting respondents.

E. H. Thornton, J. H. Rauhman, Jr., T. C. Burwell, and *R. V. Craig* for protestants.

Ed. P. Byars for Texas Cottonseed Crushers Association.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective February 13, 1936, respondents¹ proposed to increase the rate on soya bean oil meal, in sacks, from United States Gulf ports to United States Pacific Coast ports via the Panama Canal from \$5.50 per net ton, minimum 500 net tons, to \$6.50 per net ton, same minimum. Upon protests filed on behalf of the National Soybean Oil Manufacturers Association, The New Orleans Joint Traffic Bureau, and other interested parties, the operation of the proposed schedules was suspended until June 13, 1936. Certain carriers, formerly members of the United States Intercoastal Conference, operating between Atlantic and Pacific ports intervened in support of respondents. Rates and prices will be stated in amounts per net ton unless otherwise noted.

¹ Luckenbach Gulf Steamship Co., Inc., Swayne & Hoyt, Ltd. (Gulf Pacific Line), Gulf Pacific Mail Line, Ltd., and on-carriers.

The production of soya beans has attained the status of an important commercial crop in the United States only in the last 10 years. From the relatively small acreage of 864,000 acres, from which 12,000,000 bushels were harvested commercially in 1930, the planting increased to about 5,000,000 acres in 1935, producing over 43,500,000 bushels, which is almost three times the crop of 1934. Illinois produces approximately one-half of the crop, Ohio, Indiana, Missouri, and Iowa about one-third, and other States, chiefly Virginia, Tennessee, and North Carolina, approximately one-sixth.

The principal crushing plants are at Decatur, Peoria, and Chicago, Ill., and St. Louis, Mo. The operator at Peoria has a subsidiary plant at Hampton Roads, Va., which at times secures soya beans from mid-western producing areas.

Soya bean oil meal is used mainly in the manufacture of poultry feed. It is shipped in sacks and has a stowage factor of 70 cubic feet. The selling price at the date of hearing was \$20.00 f. o. b. Decatur. At San Francisco, Calif., one of the principal markets, the delivered price was \$28.50 to \$29.00, which is from \$2.42 to \$3.04 less than the f. o. b. price at Decatur plus the total transportation charges including the proposed rate of \$6.50.

The history of the westbound rate on soya bean oil meal from the Gulf to the Pacific is not sufficiently developed of record to show the rate prior to June 2, 1933, the effective date of the Intercoastal Shipping Act, 1933. On that date the rate became \$4.50, minimum 500 tons. Later a three per cent surcharge was added, increasing the rate to \$4.63½, which remained in force until October 3, 1935. In the general rate advance following the decision in *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, respondents proposed to establish the following rates: 36 cents per 100 pounds, minimum 40,000 pounds, density not to exceed 60 cubic feet; and 41 cents per 100 pounds, minimum 40,000 pounds, density over 60 cubic feet, to become effective October 3, 1935. This increase was protested, and rather than risk suspension of all increased rates respondents established the present rate of \$5.50, effective October 3, 1935.

On basis of the suspended rate, the through rate and charges over the rail-ocean route from Chicago to San Francisco would be \$11.42, consisting of the following factors: \$4.50 rail rate plus 20 cents emergency charge, \$6.50 ocean rate, 7 cents marine insurance, and 15 cents wharfage at San Francisco. From Decatur the rail-barge-ocean rate and charges would be \$11.54, which, according to the record, consists of the following factors: \$3.90 rail-barge rate plus 27 cents emergency charge, 50 cents transfer charge at Cairo, Ill., 15 cents

tollage at New Orleans, \$6.50 ocean rate, 7 cents marine insurance, and 15 cents wharfage at San Francisco.

The record indicates that there was no intercoastal movement of soya bean oil meal through Gulf ports until after October 3, 1935. Since then respondents have transported about six 500-ton lots, and one 2,000-ton shipment moved via the S. S. *Suwied*, a non-conference carrier. There has been a more or less regular movement of this commodity since 1932 from Norfolk, Va., which traffic is, to some extent, competitive with similar traffic through New Orleans. However, there does not appear to be any water carrier competition for the intercoastal traffic from mid-western points.

Respondents call attention to their need for additional revenue as disclosed in the recent intercoastal investigation, and endeavor to justify the increased rate upon the following grounds: (1) The cost of service justifies a higher rate; (2) there should be a parity of rates with Atlantic intercoastal carriers which have already established the rate proposed; and (3) the proposed rate is in line with other comparable rates.

Cost figures purporting to cover the out-of-pocket cost of operation per ton during 1934 of a representative ship in the trade, the S. S. *Katrina Luckenbach*, were introduced by respondents. For stevedoring there was included a cost of \$1.00 each for loading and unloading, which figure is derived from respondents' present stevedoring contract on brewers grain at New Orleans. The Panama Canal toll is included at 87.5 cents. For competitive reasons the cost of fuel oil, crew wages, subsistence of crew, repairs on ship, and insurance on hull and machinery is not itemized. The total cost amounts to \$5.61½. It was testified that operating costs have increased from 40 to 50 per cent in the last 18 months due to labor troubles and increased commodity prices.

This cost figure, as applied to soya bean oil meal, represents a cost of 8 cents per cubic foot, whereas the proposed rate would yield 9.3 cents. Ten cents per cubic foot is said to be the minimum compensatory earning. Protestants disparage this cost study, stating that it is merely a theoretical calculation not supported by underlying data, and that the ship selected is older and larger than the average in the trade and therefore more expensive to operate. The latter contention is denied by respondents. Protestants also point out that the stevedoring rate on cottonseed meal of 75 cents per ton could properly have been used instead of the charge on brewers grain.

Both shippers and carriers agree that a parity of rates as between Gulf and Atlantic ports is desirable, but they differ as to the manner of accomplishing this result. It appears that the same rates applied

from these ports until October 3, 1935, when alternative rates of 36 cents and 41 cents per hundred pounds, as sought to be established then by Gulf carriers, became effective from Atlantic ports after denial of request for their suspension. Competitive reasons are said to have forced the Atlantic lines to establish on January 7, 1936, the present rate of \$6.50, minimum 500 net tons. Protestants contend that parity should be established on basis of a rate determined primarily by the traffic and transportation conditions obtaining from Gulf ports, inasmuch as the preponderant movement, both present and prospective, is tributary to those ports. New Orleans interests urge that in determining the proper relations as between Gulf and Atlantic ports due consideration should be given to the fact that the service from the Gulf is slower, the Gulf lines have a better balanced cargo in and out, and the rates therefrom are more directly affected by transcontinental rail competition.

Respondents compare the proposed rate with westbound rates on other low-grade commodities moving regularly over their lines in heavy volume as follows:

	Rate per net ton	Stowage factor	Revenue per cu. ft.
			<i>Cents</i>
Soya Bean Oil Meal.....	\$6.50	70	9.3
Soda Ash.....	6.50	30	21.7
Phosphate Rock.....	6.20	40	14.7
Bone Meal.....	8.00	59	13.5
Rosin.....	10.30	70	14.7
Wrapping Paper.....	11.30	80	14.1
Pulpboard.....	9.30	100	9.3

The value of these commodities is not disclosed. Respondents also refer to the following coastwise rates from New Orleans to Philadelphia and Boston: Corn gluten feed, corn gluten meal, corn oil meal, and soya bean oil meal, \$4.00, minimum 20 tons, plus 20 cents emergency charge; bran and brewers dried grain, \$4.60, minimum 18 tons.

Protestants give emphatic expression to their objection against the proposed increase, stating that it would prevent them from meeting the competition on the Pacific Coast of soya bean oil meal imported principally from points in the Orient. While preferring to sell at the higher prices obtainable in eastern markets, they say that the greatly increased production of domestic soya beans makes imperative an outlet for soya bean oil meal to the markets on the Pacific Coast. During 1934, 30,193 tons were imported to the United States, 23,538 of which went to the Pacific Coast; and in 1935, 53,731 tons were imported, 25,781 tons going to the Pacific Coast. The declared value of the meal imported to the Pacific Coast averaged

\$19.20 in 1934, and \$20.30 in 1935. The import duty was \$6.00 per ton. The rate from the Orient to San Francisco was \$3.60. In March 1935, the quoted price at San Francisco said to apply on imported soya bean oil meal was \$30.75 when the f. o. b. price at Decatur was \$38.45. This was prior to the advent on the market of the new crop, and the supply was limited. Protestants testified that they were unable to meet this competition in the first three quarters of 1935, but made a sale of 1,500 tons at San Francisco in September 1935, at \$28.25, which price represented a shrinkage of 10 cents a ton under their regular delivered price, including the f. o. b. Decatur price of \$19.00 per ton. Protestants also face competition from sesame meal which is manufactured at Los Angeles from sesame seed imported from the Orient duty free. At San Francisco the price of sesame meal at the time of the hearing ranged from \$26.50 to \$27.00 per ton. At North Pacific ports soya bean oil meal comes into competition with corn.

Protestants lay considerable stress upon a comparison of the proposed rate with the westbound rate on bran, brewers dried grain, corn gluten feed, corn gluten meal, and corn oil meal, which articles are now grouped with soya bean oil meal at the present rate of \$5.50. These commodities compare more or less favorably with soya bean oil meal as to price, stowage, use, and general transportation characteristics. They are also grouped with soya bean oil meal by rail carriers at the same classification and the same commodity rates from mid-western producing points to the Pacific Coast. Respondents assert that they intend to increase these rates to the level of any increased rate approved on soya bean oil meal. Moreover, they testified that, with the exception of a light movement of corn gluten feed prior to October 3, 1935, these commodities have never moved from the Gulf via their lines, and consequently the rates are merely paper rates.

Reference is also made by protestants to the following rates between Gulf and Pacific ports:

WESTBOUND	Rate per net ton	Minimum net tons	Stowage factor
Corn, bulk.....	\$3.50, ¹ \$9.00 ²	500	47
Oats, bulk.....	\$3.75, ¹ \$9.25 ²	500	55-72
Clean rice.....	\$6.50.....	12	50
EASTBOUND			
Flour.....	\$6.00-\$7.20.....	12	-----
Oats.....	\$5.40.....	500	55-72

¹ Owners' risk.

² Ship's risk.

A witness for the New Orleans interests testified to a movement of corn and oats westbound, but he had no personal knowledge to

that effect. At these rates the shipper absorbs the cost of loading and unloading and is also subject to a demurrage penalty. Respondents explain that the rate on clean rice is depressed on account of rail competition and is in line for an increase.

Protestants instance rates on numerous kinds of meal and oil cake from Gulf ports to ports in the United Kingdom and continental Europe which range from \$3.20 to \$10. The rate on soya bean oil meal is shown as \$4.40 to United Kingdom ports and \$4.00 to continental European ports. One of protestants' witnesses testified that his company had made shipments to Antwerp, Rotterdam, and Amsterdam at the \$4.00 rate. The record indicates that in the matter of balanced cargo in both directions, operating conditions are more favorable to respondents than to Gulf-transatlantic lines which depend largely upon a one-way cargo, but respondents maintain that this is more than offset by the Panama Canal tolls paid by the intercoastal carriers and their higher operating expenses which are due primarily to higher labor costs. The meagre evidence as to similarity of traffic and transportation conditions affecting the compared rates minimizes the importance that should be attached to the comparison. Furthermore, there is considerable doubt as to the stability of the rates to these foreign ports.

The all-rail transcontinental rate on soya bean oil meal from the principal producing points to the Pacific Coast is 76.5 cents per 100 pounds or \$15.30 per net ton, minimum 25 tons. Recently the rail lines attempted to reduce this rate to 55 cents per 100 pounds or \$11 per net ton, minimum 40 tons, to meet barge-and-ocean and rail-barge-and-ocean rates, and to permit domestic soya bean oil meal to compete with the imported meal at Pacific Coast points. This reduced rail rate of \$11 would have been lower than both the rail-ocean charge of \$11.42 and the rail-barge-ocean charge of \$11.54, the ocean rate being included at \$6.50. However, the rate of 55 cents was suspended and found not justified by the Interstate Commerce Commission because it concluded that such rate would unduly prejudice cottonseed cake and meal and the shippers thereof. That Commission expressed the view that the rate would not be prejudicial or otherwise unlawful if it were also established on cottonseed cake and meal. The establishment of the 55-cent rate would undoubtedly affect the value of respondents' service to the shipper. Apart from that, however, such rate, established under the competitive pressure heretofore mentioned, would afford no criterion of a maximum reasonable rate for the services here in question.

It was testified that the general rate advance, effective October 3, 1935, following the intercoastal investigation, amounted to an in-

1 U. S. S. B. B.

crease of approximately 12 percent. Protestants point out that the present rate represents an increase of 18 percent over the voluntarily established rate of \$4.63½, and argue that an advance of 40 percent, as manifested by the proposed rate of \$6.50, is clearly excessive. In this connection respondents indicated that the increases on the various commodities were not uniform, and that the advance proposed here is not out of line with those made on certain other commodities. Ordinarily, the voluntary establishment of a rate raises a presumption of its reasonableness, but such an inference does not necessarily follow when there is no movement under such rate. Furthermore, the fundamental question is whether the proposed rate is reasonable regardless of the amount of the advance.

As a general rule, a maximum reasonable rate should in principle be no lower than the cost of service to the carrier plus a reasonable profit, and no higher than the reasonable worth of the service to the shipper. The value of respondents' evidence in regard to the cost of service is necessarily impaired by the fact that no attempt was made to itemize all of the cost factors; also the failure to submit the underlying supporting data from which the accuracy of the figures can be tested. Nevertheless, the cost study affords, in a general way, a rough guide in view of the increased operating expenses since 1934, and considering the fact that ordinarily substantial additions should be made to out-of-pocket cost in order to reflect all the cost that may be fairly allocated to the service plus a reasonable margin of profit to the carrier. But even though the study were unusually comprehensive and exact, the cost developed thereby, though entitled to considerable weight, could not be accepted as controlling, since due consideration must also be given to the value of the service to the shipper.

The competition met by protestants in the sale of soya bean oil meal on the Pacific Coast may be considered only in so far as it is a factor affecting the value of the service to the shipper. The Department has no authority to reduce a rate primarily to protect an industry from foreign or domestic competition. *Atchison, T. & S. F. Ry Co. v. Interstate Commerce Commission*, 190 Fed. 591. That function lies within the managerial discretion of the carrier.

The value of the service to the shipper in a general sense is the ability to reach a market at a profit. The commodity in question has moved rather freely from the Gulf under the present rate. Also, shipments have moved from Norfolk at a rate of \$5.66½, minimum 50 net tons, prior to October 3, 1935, and \$7.20, minimum 12 net tons, subsequent thereto. Since reducing their rate to \$6.50, the Atlantic lines have received requests from shippers of this commodity for

rates ranging from \$5.20 to \$6.00. There was an all-rail movement of 50 tons from Decatur to Portland, Oregon, at a rate of \$15.30. It was testified that large consumers on the Pacific Coast would pay \$1.00 more per ton on shipments via rail than over the water route. This differential under the all-rail rate would produce a rate of \$14.30. It is of interest to compare this figure with the aggregate charges via Gulf ports of \$11.42 and \$11.54, including the ocean rate at \$6.50. However, the lack of an appreciable all-rail movement lessens the significance of this comparison.

The possibility of reaching a market at a profit depends not only on the measure of the rate, but also on the amount by which a shipper can shrink his base price to meet competition. Apparently protestants fix the price f. o. b. Decatur. They have shrunk this price in certain instances, but the record is silent as to the lowest profitable base price. There is no showing of what it costs to produce the commodity in question, or the margin of profit on which the operations are conducted. Although it is not clear what relation the declared value of imported meal has to the selling price, it is worthy of note that the declared value of soya bean oil meal imported on the Pacific Coast in 1935, plus the duty and freight rate, amounts to \$29.90, or \$1.65 more than the delivered price one protestant was able to make in September 1935.

Upon all the facts of record and the argument based thereon, it is concluded that the suspended schedules have been justified.

The Department finds that the suspended schedules have been justified. An order will be entered vacating the order of suspension and discontinuing this proceeding.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 370

GULF WESTBOUND INTERCOASTAL SOYA BEAN OIL MEAL RATES

ORDER

It appearing, That by order dated February 10, 1936, the Department 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 June 13, 1936;

It further appearing, That a full investigation of the matters and things involved has been made and that said Department 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, and has found that respondents have justified the schedules under suspension;

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 June 12, 1936, and that this proceeding be discontinued.

(Sgd.) ERNEST G. DRAPER,
Acting Secretary of Commerce.

JUNE 6, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 412

IN THE MATTER OF

MODIFICATION NO. 3 OF NORTH ATLANTIC CONTINENTAL FREIGHT
CONFERENCE AGREEMENT

(United States Shipping Board Bureau Agreement No. 4490-3)

Submitted June 12, 1936. Decided July 14, 1936

Modification of conference agreement found to be unjustly discriminatory and unfair as between carriers, and detrimental to commerce of the United States. Modification ordered disapproved and cancelled, and proceeding discontinued.

M. G. de Quevedo for American Diamond Lines, Inc.; *J. Newton Nash* for Compagnie Maritime Belge (Lloyd Royal) S. A.; *Roscoe H. Hupper* for N. V. Nederlandsch-Amerikaansche Stoomvaart Maatschappij; *J. Sinclair* for North Atlantic Continental Freight Conference; *J. J. Moore* for United States, Department of Commerce (Yankee Line); *Thor Eckert* for Arnold Bernstein Schiffahrtsgesellschaft m. b. H. and Red Star Linie G. m. b. H.; and *J. E. Waldorf* for Hamburg-Amerikanische Packetfahrt Actien Gesellschaft.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Respondents waived the filing of briefs and a proposed report, and argued the case before the examiner at the hearing.

This proceeding is an investigation into and concerning Modification No. 3 to North Atlantic Continental Freight Conference Agreement (United States Shipping Board Bureau Agreement No. 4490). It was instituted by the Department following a petition of American Diamond Lines, Inc., for cancellation of Modification No. 3 under section 15 of the Shipping Act, 1916. All carriers parties to

Agreement No. 4490, as modified, were made respondents¹ in the proceeding. A hearing was held in New York, N. Y., on June 12, 1936.

Respondents are common carriers by water in foreign commerce engaged in transportation between North Atlantic ports of the United States and Canada, Hampton Roads/Montreal Range, and ports in Belgium, Holland, and Germany. The issues of this proceeding relate largely to the eastbound traffic of the so-called Western Group, which consists of Black Diamond serving Antwerp and Rotterdam, Holland-America serving Rotterdam, and Lloyd Royal, Red Star, and Arnold Bernstein serving Antwerp, the latter transhipping unboxed automobiles, etc., to Rotterdam and Amsterdam since Modification No. 3 became effective. The other respondents, with the exception of three lines serving only Canada in the westbound trade, comprise the Northern Group and generally serve German ports. They apparently have only a nominal interest in the immediate question involved. Respondents, with the exception of the Canadian lines, operate westbound under the Continental North Atlantic Westbound Freight Conference (Agreement No. 70). Strictly speaking, the group designations apply only in connection with the westbound trade of respondents, but are used herein for convenient reference. Respondents in both groups, including the Canadian lines, are members of the North Atlantic Continental Freight Conference under Agreement No. 4490, which relates only to eastbound traffic.

Prior to the change in Agreement No. 4490 by virtue of Modification No. 3, the applicable tariff rules issued pursuant to the agreement, except in certain instances not here material, provided that all charges and expenses beyond customary port of call should be charged to the shipper. There is no allocation of ports under the agreement. As an inducement to Arnold Bernstein to refrain from calling direct at Rotterdam and for other reasons, about which there is considerable controversy in the record, all respondents agreed to permit Arnold Bernstein to tranship unboxed automobiles and related articles at Antwerp when destined to Rotterdam or Amsterdam and to absorb all charges and expenses beyond Antwerp. This

¹ American Diamond Lines, Inc. (Black Diamond Lines); Baltimore Mall Steamship Company, Inc. (Baltimore Mall Line); Arnold Bernstein Schiffahrtsgesellschaft m. b. H. (Arnold Bernstein Line); Canadian Pacific Steamships, Ltd.; Compagnie Maritime Belge (Lloyd Royal) S. A.; Ellerman's Wilson Line, Ltd. (Ellerman's Wilson Line); Hamburg-Amerikanische Packetfahrt Actien Gesellschaft (Hamburg-American Line); Inter-Continental Transport Services, Ltd. (County Line); N. V. Nederlandsch-Amerikaansche Stoomvaart Maatschappij "Holland-Amerika Lijn" (Holland America Line); Norddeutscher Lloyd (North German Lloyd); Red Star Linie G. m. b. H. (Red Star Line); United States Lines Company (United States Lines); United States, Department of Commerce (Yankee Line). Respondents are hereinafter referred to by their trade names appearing in parentheses following their corporate titles.

agreement is embodied in Modification No. 3, approved by the Department February 28, 1936, which reads as follows:

All such freights and other charges shall be the same via the vessels of all parties, except that on shipments of unboxed automobiles, chassis, and trucks on wheels destined to Rotterdam or Amsterdam on vessels of Arnold Bernstein Schiffahrtsgesellschaft m. b. H. rates to Rotterdam and Amsterdam may be applied on the shipments to Rotterdam and Amsterdam moving under through bills of lading via Antwerp.

Black Diamond and Lloyd Royal state: (1) That this exclusive transshipping privilege accorded to Arnold Bernstein is detrimental to their interests; (2) that they agreed to it only in consideration of a mutual understanding existing among the Western Group members that an additional agreement would be executed concerning westbound traffic; and (3) that Holland-America, to whom the transshipping arrangement is advantageous, now unjustly refuses to sign such proposed westbound agreement which, among other things, would restrict its service to Rotterdam. Wherefore, cancellation of the modification is requested, failing which Black Diamond states that it will withdraw from the conference. Lloyd Royal indicates that it will do likewise and extend its service to Rotterdam.

A brief statement of the situation confronting the Western lines in December 1935 and a general idea of their several objectives will serve to clarify the negotiations culminating in Modification No. 3. There was a question of whether a new agreement would be negotiated for 1936 covering westbound cargo from the Rotterdam/Antwerp Range, including an allocation of ports. Also, the matter of a new pool agreement for the Western lines, to replace No. 223-E which had expired, was pending. Finally, the lines were faced with the question of how to deal with the Arnold Bernstein transshipping situation.

Prior to its admission to the eastbound conference Arnold Bernstein transhipped unboxed automobiles at Antwerp to Rotterdam, absorbing the transshipping rates and charges. After its admission to the conference it could no longer make such absorptions. It therefore discontinued this service and began to call at Rotterdam direct. Up to this time its eastbound cargo had been confined to unboxed automobiles and related cargo. In order to offset the expenses for direct calls at Rotterdam, it decided, apparently in December 1935, to expand its service to include general cargo to and from Dutch ports. Holland-America was emphatically opposed to this, but as an alternative was disposed to agree to the transshipping arrangement at Antwerp, which was also satisfactory to Arnold Bernstein and Red Star. Black Diamond and Lloyd Royal, as in the past, were opposed to this alternative.

As to the westbound trade, Black Diamond and Lloyd Royal were opposed to a pooling by the members of the Western Group among themselves, but favored a westbound agreement which would allocate ports, and were willing to enter a pool agreement between the Western Group and the Northern Group, on the condition that the distribution of overcarrying or undercarrying of the Western Group be divided among the members of that group upon the basis of their actual pool contributions. Holland-America, Arnold Bernstein, and Red Star favored a pool agreement for the Western Group. Moreover, Holland-America would not consider any westbound agreement until definitely assured that Arnold Bernstein would not serve Rotterdam direct with general cargo.

After preliminary negotiations it appears that on January 13, 1936, at a meeting at Antwerp all parties agreed to the transshipping arrangement which later became Modification No. 3; also to admitting Arnold Bernstein and Red Star as members of a proposed westbound agreement which would allocate ports and a group pool agreement with the Northern Group. As a result of this understanding the North Atlantic Continental Freight Conference, on February 6, 1936, unanimously approved Modification No. 3, which, as stated, was later approved by the Department on February 28, 1936. Shortly thereafter a pool agreement was negotiated between the Western and Northern Groups, but up to the present Black Diamond and Lloyd Royal have refused to sign it, apparently because of the situation that has arisen in connection with Modification No. 3.

Tentative drafts of the understanding of January 13 were prepared and discussed at later meetings of the Western lines, and on March 6, 1936, at Antwerp, the Western lines agreed, among other things: (1) To allocate ports restricting Holland-America to Rotterdam, Arnold Bernstein, Red Star, and Lloyd Royal to Antwerp, and Black Diamond to Rotterdam and Antwerp, subject to the exception in Modification No. 3 as to Arnold Bernstein, and (2) to distribute the group's overcarrying or undercarrying under the Western Group-Northern Group pool on the relative basis of the actual contributions of the individual lines.

Despite the agreed allocation of ports, however, Holland-America announced its intention to carry parcels of grain to Antwerp. Although there is no mention of grain traffic in the minutes of the meetings, it appears from the record that there was no objection to Holland-America's carrying full cargoes of grain to Antwerp. But Holland-America asserts that there was also a tacit agreement as to its right to carry parcels of grain. At this time Holland-America had booked several loads of grain from Boston to Antwerp, notice of which, coupled with Lloyd Royal's objection, apparently reached the home office in Holland about March 4. Holland-America insists

on the right to carry grain to Antwerp despite the proposed agreement as to port allocation. Furthermore, it contends that the term "cargo" used in setting forth the scope of the port allocation in the proposed agreement does not include grain, apparently basing this contention solely upon the fact that grain is frequently an "open" item, or a commodity on which conferences do not fix rates. On the other hand, there is general testimony to the effect that it is a custom among conference carriers to respect the port rights of the individual members.

Because of the refusal of Black Diamond and Lloyd Royal to concede the right to carry parcels of grain without their permission, Holland-America, as early as May 12, 1936, signified its intention not to sign the proposed westbound agreement of the Western Group. Black Diamond and Lloyd Royal seriously question the good faith of Holland-America in these negotiations, asserting that after eliminating Arnold Bernstein as a competitor at Rotterdam, Holland-America, through the pretense of an unrestricted right to carry parcels of grain to any port, is attempting to enter the overtonnaged Antwerp trade without regard to the port rights of the Antwerp lines. The grain traffic to Antwerp is an important item to the Antwerp lines.

Finally, Black Diamond and Lloyd Royal attempted to secure the rescission of Modification No. 3 by the North Atlantic Continental Freight Conference, but failed at its meeting on May 7, 1936, through the adverse vote of Holland-America which was concurred in later by Arnold Bernstein and Red Star. The Northern Group carriers took a neutral position and did not vote.

The foregoing résumé of the circumstances and conditions surrounding the negotiation of Modification No. 3 indicates rather conclusively that the acquiescence of Black Diamond and Lloyd Royal to the transshipping arrangement was predicated chiefly on their understanding that Holland-America was ready to join in a new westbound working agreement. Whether Holland-America was justified in refusing to execute such an agreement need not be decided here inasmuch as the principal issue is whether the modification is unjustly discriminatory or unfair as between carriers or shippers or operates to the detriment of the commerce of the United States, or is in violation of the Shipping Act, 1916.

A witness for Lloyd Royal testified that the modification is particularly discriminatory and unfair to that line in that it gives Arnold Bernstein a preferential advantage in the solicitation of traffic. Where a shipper has both unboxed automobiles for Rotterdam and cargo for Antwerp he would naturally patronize Arnold Bernstein to the exclusion of Lloyd Royal, who is not permitted to offer tran-

shipping privileges at the Rotterdam rate. It is contended that when the same shipper later offers cargo for Antwerp only, Arnold Bernstein has the natural commercial advantage over Lloyd Royal because of the prior contact and transactions. The witness also testified that Arnold Bernstein, freed from the necessity of calling direct at Rotterdam, is able to offer a better Antwerp service, thus intensifying the competition at that port.

A witness for Black Diamond testified that the modification is discriminatory and unfair to that line because of the competitive advantage it gives Arnold Bernstein. Generally speaking, Black Diamond's sailings from New York to Antwerp are on the 5th, 15th, and 25th of the month, and to Rotterdam on the 10th, 20th, and 30th. Therefore, if it had the same transshipping privilege as Arnold Bernstein it could offer service to Rotterdam on unboxed automobiles six times a month instead of three. Arnold Bernstein carries the greater portion of this traffic, for which there is keen competition among the Western lines.

No traffic studies were submitted to show that Black Diamond or Lloyd Royal had lost any shipments on account of the modification, but these two carriers contend that such evidence, which would take considerable time to compile, is unnecessary when an agreement, on its face, is patently unfair and discriminatory.

There is no direct testimony in the record in support of the lawfulness of the modification under section 15 of the Act. Holland-America's testimony was confined to an effort to justify its refusal to sign the westbound agreement on account of the dispute over grain to Antwerp, and to show that such agreement had no connection with Modification No. 3. Arnold Bernstein offered no testimony. There is an admission by Black Diamond that in one respect the modification has been of benefit to it by indirectly keeping Arnold Bernstein out of Rotterdam with direct calls and with cargo other than that covered by the modification.

Summed up, the situation, briefly, is this: Originally, under Agreement 4490 all of the Western lines were upon an equal footing. Now, Arnold Bernstein is given a distinct competitive advantage over Black Diamond and Lloyd Royal through their concessions under Modification No. 3 made under the assumption of a consideration which never materialized.

The Department finds that Modification No. 3 of North Atlantic Continental Freight Conference Agreement (United States Shipping Board Bureau Agreement No. 4490-3) is unjustly discriminatory and unfair as between carriers and detrimental to the commerce of the United States. An order will be entered disapproving and cancelling said modification and discontinuing this proceeding.

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON

No. 412

IN THE MATTER OF

MODIFICATION NO. 3 OF NORTH ATLANTIC CONTINENTAL FREIGHT
CONFERENCE AGREEMENT

(United States Shipping Board Bureau Agreement No. 4490-3)

ORDER

It appearing, That by order dated May 29, 1936, the Department initiated an investigation into and concerning Modification No. 3 of North Atlantic Continental Freight Conference Agreement (United States Shipping Board Bureau Agreement No. 4490-3);

It further appearing, That a full investigation of the matters and things involved has been made and that said Department on the date hereof has made and entered of record a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof, and has found that said modification is unjustly discriminatory and unfair as between carriers and detrimental to the commerce of the United States;

It is ordered, That said modification be, and it is hereby, disapproved and cancelled and this proceeding discontinued.

[SEAL]

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

JULY 14, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 120

SEAS SHIPPING COMPANY, INC.

v.

AMERICAN SOUTH AFRICAN LINE, INC., ET AL.

Submitted May 28, 1936. Decided August 1, 1936

Defendants' vessels operated from North Atlantic ports of the United States to South and East Africa not shown to be fighting ships in violation of section 14 of the Shipping Act, 1916; provisions of section 14a found not applicable. Defendants' denial of complainant's application for participation in rate-fixing agreement and modification of rotation of sailings agreement found justified. Justification for disapproving, canceling, or modifying rate-fixing agreement (3578) and rotation of sailings agreement (3578-A), or pooling agreement (3578-B) not shown.

Frank V. Barns and *Richard F. Weeks* for complainant.
Cletus Keating and *Roger Siddall* for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions were filed by all parties to the report of the examiner, and the case was orally argued. The conclusions herein differ somewhat from those proposed by the examiner.

Complainant, a corporation organized in 1920 under the laws of New York, is engaged in the transportation of property from New York, N. Y., and Baltimore, Md., to ports in South and East Africa. Defendants,¹ except American South African Line, Inc., also a New York corporation, are foreign corporations, each with an agent in

¹ American South African Line, Inc.; The Clan Line Steamers, Ltd.; Deutsche Dampfschiffahrts Gesellschaft Hansa (Hansa Line); Ellerman & Bucknall Steamship Co.; Houston Line (London) Ltd.; Prince Line, Ltd.; and The Union-Castle Mail Steamship Co., Ltd.

New York City, who, for many years prior to complainant's entrance into that trade, engaged in such transportation from New York, N. Y., and occasionally from other Atlantic coast ports of the United States. Complainant and defendants are common carriers by water in foreign commerce subject to the Shipping Act, 1916.

American flag participation in this trade began with the establishment in 1919 by the United States Shipping Board of a service under the trade name "American South African Line." Effective February 1, 1925, and until January 1926, the American South African Line maintained monthly sailings from North Atlantic ports of the United States under agreements with the foreign defendants which had been negotiated on behalf of the United States by the United States Shipping Board Emergency Fleet Corporation and approved by the United States Shipping Board under the provisions of section 15 of the Shipping Act, 1916. In January 1926 the American South African Line and the vessels operated in its service were sold to defendant American South African Line, Inc., organized for the purpose of purchasing the line.

Defendants now operate in the outbound trade as a conference under United States Shipping Board Bureau Agreement No. 3578, approved by the Department of Commerce October 22, 1934, pursuant to section 15 of the Shipping Act, 1916, their purpose, as stated in article 1 of that agreement, being:

* * * to promote commerce from New York and other United States Atlantic coast ports (from Portland, Maine, to Key West, inclusive) at which inducement offers to west, southwest, south and east African ports (from Lobito to Mombasa, both inclusive) and including the islands of St. Helena, Ascension, Madagascar, Reunion, and Mauritius, for the common good of shippers and carriers by establishing and maintaining agreed rates and charges for the transportation of merchandise and agreed classifications, regulations, and practices in connection therewith.

They operate with a joint tariff of rates covering all sailings made by them from the United States ports to the African ports here involved. Defendants also have an agreement (no. 3578-A) for rotation of sailings out of New York, article 2 of which provides that:

If not more than 48 sailings per year are maintained the American South African Line, Inc., shall have 1 sailing each calendar month. If the trade should warrant the maintenance of more than 48 sailings per year the lines shall confer with a view to making suitable addition to or modification of this agreement.

During the life of this agreement and for some time prior thereto, in no one year have there been more than 48 sailings. After deducting the minimum of 12 sailings allotted the American South African Line, the sailings allotted the foreign line members are divided by the agreement into seven equal shares, the Union-Castle Mail Steam-

ship Co., Ltd., having two shares, the other foreign lines one share each. Article 5 of the agreement further provides that:

The parties shall take their turn as nearly as may be in regular rotation, subject to the provisions of article 2, but turns shall be exchanged as may be necessary to meet the exigencies of trade. Equal time shall be allowed on berth for each vessel sailing and two vessels shall not be on berth at the same time except by consent.

There is also an agreement for pooling of revenue (no. 3578-B) to which only the foreign defendant lines are parties.

Traffic originating in the United States and destined to south and east African ports, except that exported through Pacific coast ports, moves through North Atlantic and Gulf ports of the United States, and to a considerable extent through Montreal, Quebec, St. John, New Brunswick, and Halifax, Nova Scotia. An investigation of conditions made by complainant disclosed that in the latter part of 1934 and early 1935 exports to the destinations involved had increased considerably over 1932. Automobiles of United States manufacture were moving in large volume through Montreal and New Orleans, La., ports beyond the scope of the above described agreements, and complainant felt that an additional service from United States North Atlantic ports would attract such shipments and also shipments of other commodities moving through Canadian and Gulf ports. Complainant owned four vessels suitable for the trade, which at that time were not in active operation, and on April 18, 1935, it announced its service, under the American flag, with monthly sailings from New York and Baltimore, beginning June 22, 1935. At the time of hearing six consecutive monthly sailings had been made.

Complainant's desire to become a member of the conference was first expressed at a meeting with the secretary thereof on April 30, 1935. Other meetings subsequently took place during which it was stated on defendants' behalf that in view of the denial of an application of the Kerr Steamship Co., operating Silver Line vessels, for conference membership it would be inconsistent to admit complainant. The conditions upon which the Kerr Steamship Co. desired to participate in the conference were not disclosed. In discussing the situation at these meetings complainant announced its desire and willingness to operate at rates no lower than the rates of defendants. Requests for permission to present personally and discuss the matter with members of the conference at its regular meeting were denied, but complainant was advised it might submit a formal application. Accordingly, on June 7, 1935, a written application to become a party to agreement no. 3578 and a member of the conference was submitted in which it was stated:

In making this application, the Seas Shipping Co., Inc., realizes that if it is accepted as a member of the conference, it will be necessary to amend the agreement for rotation of sailings in the outbound South African trade, United States Shipping Board agreement no. 3578-A * * *. The Seas Shipping Co., Inc., asks that it be allowed to become a member of the conference and have one sailing each calendar month, and upon the same terms and conditions as provided for the American South African Line, Inc., by * * * agreement no. 3578-A * * *.

At the hearing when asked what amendment to agreement no. 3578-A would be necessary to meet the conditions of its application, complainant replied:

If we were admitted into the conference they would have to give us free loading time the same as other members of the conference enjoyed. * * * with our being in there it would mean the conference might be sailing a boat every 5 days instead of every 7 days.

Agreement no. 3578-A gives the American South African Line, Inc., a minimum of 12 sailings each year, with equal loading time on berth for each sailing free of competitive loading by other conference vessels, which, based upon the estimated total of 48 conference sailings, would be approximately 7 days. Complainant's application, therefore, was in substance a request for participation in rate making under agreement no. 3578, under which no rate change can be made except by unanimous consent, and an amendment of article 5 of agreement no. 3578-A to give it, like the American South African Line, a minimum of 12 sailings a year with equal loading time for each sailing free of competitive loading by the other members of the conference including the American South African Line. On June 27, 1935, the conference, through its secretary, denied the application without stating any reason for such action. Later, when requested by complainant to state its reasons, the secretary of the conference replied that "in their opinion it is not incumbent on them to specify to you the reasons why you are not entitled to admission, and that, in their judgment, you have wholly failed to do so."

Complainant alleges that defendants in refusing it admission to the conference have violated their conference agreement and that such action is also a violation of section 14a, paragraph 2, of the Shipping Act, 1916. It further alleges that rate reductions by defendants, on June 6, 1935, just prior to complainant's application, and again on September 19, 1935, were initiated for the purpose of driving it out of the trade; that each of defendants' vessels sailing on and subsequent to June 15, 1935, was a fighting ship, operated in violation of section 14 of that act; and that defendants' action in reducing rates to an unremunerative and noncompensatory level resulted in a complete destruction of the rate structure in the trade, a condition

which has been and continues to be not only detrimental to complainant's business, but also detrimental to the commerce of the United States. A cease and desist order, disapproval, and cancellation of agreements nos. 3578, 3578-A, and 3578-B, hereinabove mentioned, under authority of section 15, an award of reparation for injuries alleged to have been sustained, and denial to defendants, other than American South African Line, Inc., of the right of entry into ports of the United States are requested.

Defendants in defense of their action state that as early as 1933 the conference rate structure became unstable, because of nonconference competition from North Atlantic ports, Gulf ports of the United States, and ports in Canada. As early as June 1934 it was felt that because of the increased number of sailings offered by carriers operating from the Gulf and Canada, the conference rate structure could not much longer be maintained.

Defendants' combined service from North Atlantic ports of the United States, since early 1930, maintained, with some exceptions, on a basis of from three to four and occasionally five sailings each month, in February 1935, was established upon a regular weekly basis out of New York, with some calls at other Atlantic ports for loading. In addition thereto, monthly sailings were maintained from New York, N. Y., and other ports by the nonconference Baron Line for approximately 15 years operated by the United States Navigation Co., Inc., at rates consistently below the conference level. These services were further augmented in June 1935 by one sailing each per month by the Kerr Steamship Co. and by complainant.

From Montreal and other Canadian ports the service of Elder Dempster & Co., Ltd., and subsidiaries increased in 1934 over 100 percent, or from 12 to 25. Although in September 1935 that company had only one sailing, and only one in October and two in November, in May and June of that year Isbrandtsen-Moller Co., Inc., also placed vessels on berth from Montreal.

From Gulf ports, the service of the Silver-Java-Pacific Line, which started with monthly sailings in August 1932, was placed upon a semimonthly basis in July 1934. In August of that year monthly sailings were inaugurated by the States Marine Corporation, but that line withdrew in May 1935. On April 18, 1935, the American South African Line, Inc., enlarged the scope of its operations by establishing a separate monthly service from Mobile, Tampa, and New Orleans.

The following table shows the number of sailings of all lines from the various ports during the past 5 years, and the increased service available since 1931:

Year	Sailings from New York		Sailings from Canadian ports	Sailings from Gulf ports	All ports
	Conference	Others			
1931.....	43	12	13	0	68
1932.....	36	12	12	4	63
1933.....	36	12	12	14	74
1934.....	42	12	25	22	101
1935 (10 months).....	38	20	27	1 25	1 110

¹ Exclusive of 7 sailings of the American South African Line, Inc., from Gulf ports between April and October, inclusive.

A major factor in bringing about the increased sailings from Gulf ports and Canadian ports is the fact that inland all-rail and rail-water differentials have operated against the port of New York and in favor of Gulf ports and the port of Montreal on automobiles originating at principal manufacturing cities. The all-rail rate from such points to New York, N. Y., on unboxed automobiles was and is 17 cents per 100 pounds higher than the all-rail rate to New Orleans, La., and 2 cents per 100 pounds higher than the all-rail rate to Montreal. There are also rail-water combination rates from Detroit, Mich., to Montreal, which, dependent upon the routing, are from 33 to 67 cents per 100 pounds lower than the rail rate to New York. Export all-rail rates to St. John and Halifax are the same as the rates to New York.

As already stated, the Baron Line for many years consistently underquoted the conference. During July 1934 rates from the Gulf quoted by the Silver-Java-Pacific Line on agricultural implements, hardware, radios, electric refrigerators, and rubber tires ranged from \$1 to \$6 per ton lower than rates on such commodities at that time maintained by defendants. Rate reductions made by defendants to secure cargo for their vessels were met with still lower rates by this Gulf competitor. In that month the conference attempted to enter into contracts with shippers for automobiles at \$7 per ton, but were advised lower rates could be obtained from the Gulf. At this time conference rates on automobiles were \$10 per ton unboxed, \$8 boxed. In August 1934 it was found that exports through Gulf ports of the above-mentioned commodities, which previously moved through North Atlantic ports, had increased materially. As stated by a principal witness for defendants, "once in a while a large parcel might come up in the market. We would bid for it. Sometimes we would get it and sometimes we would not. Naturally, we had to cut the rates to get it. Every reduction we made, the other people went us one better as a rule, and they practically got the cargo."

In January 1935, Gulf operators, Silver-Java-Pacific Line and States Marine Corporation, reduced rates on trucks to \$5 per ton

and on unboxed automobiles from \$10 to \$9 per ton. In March the conference further reduced the latter rate to \$7, due to an understanding that the Baron Line and Elder Dempster for some time had been charging \$7 or lower, and also to meet Gulf competition. At this time there appears to have been in effect generally in this trade a differential of \$2 per ton between boxed and unboxed automobiles. In April, when the Kerr Steamship Co. and complainant announced their entrance into the trade from New York, competition became so severe that defendants decided that in order to retain the business which the conference lines had developed, the level of rates would have to be reduced.

Prior to complainant's entry into the trade defendants maintained rates ranging from \$5 to \$20 per ton of 40 cubic feet or 2,240 pounds, Capetown basis, with fixed differentials to outports beyond. On June 6, 1935, they announced the following reductions, effective June 3, 1935:

Rates prior to June 3, 1935:	Rates effective June 3, 1935:
\$5 to \$8.	\$5 Capetown basis.
\$9 to \$12.	\$6 Capetown basis.
\$13 to \$16.	\$7 Capetown basis.
\$17 to \$20.	\$8 Capetown basis.

Some exceptions to the new scale were made, and a 50-percent reduction was made in outport differentials. At this time they quoted a \$6 rate on unboxed and \$5 on boxed automobiles, thus reducing the differential from \$2 to \$1. The only evidence that complainant up to this date had quoted any rates lower than those of the conference carriers is that on one occasion in late February or in March an automobile manufacturer who previously had moved the majority of his shipments via Montreal was offered a lower rate applicable only on shipments of 5,000 tons per ship per month. The actual rate quoted is not in evidence, and the offer was not accepted. As hereinbefore stated, defendants attempted in July 1934 to contract for automobiles at \$7 per ton and in March 1935 they reduced their unboxed rate to that figure.

Complainant testified that up to June 6, 1935, it had tentatively booked cargo at rates no lower than those quoted by defendants. To hold that cargo and to secure other bookings for its June 22 and subsequent sailings, complainant reduced its rates, as did other non-conference carriers. The record does not disclose the specific amount of such reductions. It does show that in July 1935 complainant quoted the same rates on automobiles as those announced by the conference on June 6. Tariffs filed with the Department show that on

September 1, 1935,² complainant had a rate of \$5 for the transportation of automobiles whether boxed or unboxed. Complainant states this rate was named in August 1935 because at that time very few automobiles were moving and the reduction was necessary to obtain business. Prior to September 1, 1935, but subsequent to June 3, rates of complainant on numerous other commodities were \$1 or \$2 per ton lower than those of defendants, and in some instances the difference in rates was greater. In some cases, however, complainant's rates were no lower than rates of other nonconference carriers with which it competed.

A large part of the cargo moving in this trade is booked through freight brokers. Defendants had been paying brokerage at the rate of 1¼ percent. About 10 days prior to its first sailing, complainant increased its rate from 1¼ to 2½ percent, for the stated purpose of meeting the rate paid by the Baron Line and Kerr Steamship Co. Later, upon information that a rate in excess of 2½ percent was being paid by the Baron Line, defendants increased their rate to 5 percent. Complainant also increased its rate of brokerage to 5 percent.

On September 19, 1935, defendants made a further general reduction in their rates to \$4 per ton, with some exceptions, on all commodities destined to ports within the Capetown-Laurenco Marques range, and \$6.50 to Beira. At this time all port differentials were abolished, and the rate on automobiles, the largest moving commodity in volume except petroleum products, was made \$4 whether boxed or unboxed. Such rates are admitted to be unremunerative for the service rendered and noncompensatory.

Defendants state their rate reductions were initiated solely in their own defense, designed to eliminate alleged unnecessary tonnage in the trade, to retain business which they had developed, and also in the hope that rates would thereby be stabilized. They deny any intention to drive any competitor out of business. The tonnage carried by them during the period 1930-35, inclusive, is as follows:

Year	Tonnage carried by defendants	Sailings	Average tonnage per sailing	Percentage of unused space
1930.....	279,394	48	5,444	-----
1931.....	229,319	43	5,393	32.3
1932.....	122,031	36	3,390	55.6
1933.....	156,826	36	4,356	42.5
1934.....	281,162	42	6,694	19.7
1935.....	231,985	46	5,124	35.2

¹ Last quarter estimated on basis of prior 9 months.

² Prior to this date rates actually charged by common carriers in foreign commerce were not on file.

A more detailed analysis of exhibits from which the foregoing table is compiled shows that in June 1935 defendants carried a total of 18,743 tons of cargo, with an average of 4,686 tons per sailing. During July and August total volume increased to 19,099 and 21,994 tons, respectively, with an average per sailing of 4,775 and 5,498 tons, respectively. In September, however, both the total volume and average tonnage per vessel declined below that of June, and in the third quarter of 1935 the unused space in defendants' vessels amounted to 39.3 percent, the highest for any period since 1933.

The record does not show to what extent the vessel tonnage in the trade exceeded the amount of cargo actually moving. Certain data showing the value of exports from the United States to South and East Africa were submitted. Such information, however, is of little value when attempting to show that unnecessary tonnage was being operated.

In 1935 exports of automobiles to South and East Africa were greater than at any time in the past; notwithstanding, shipments of that commodity via defendants' vessels in 1935, up to and including October, decreased materially from 1934. In November 1935, the movement through New York, principally unboxed, due to the removal of the differential between boxed and unboxed cars, was exceptionally heavy. This was attributed primarily to the advancement of the annual automobile shows, usually held in January or February, to November; also to the fact that steamship service from Montreal had decreased and that carriers from New Orleans had not placed additional vessels on berth. In November the conference placed two additional steamers on berth, but during that month the American South African Line, Inc., was compelled to shut out cargo which, upon instructions from the shippers, was delivered to complainant, who also had requests for space it could not grant. In December defendants did not have sufficient space available to accommodate the shipments offered. Offerings were sufficiently heavy to induce the American South African Line, Inc., to charter an additional vessel. Complainant states it has experienced no scarcity of cargo and that its carryings have increased with each sailing.

The shortage of space did not exist until after the removal of the differential between boxed and unboxed automobiles. It is obvious that a ship can accommodate more boxed automobiles than unboxed ones. Automobiles for export are delivered to carriers by water as follows: (1) Knocked down, packed densely in boxes of moderate size—shipments of this character present no unusual stowage problem, and are regarded as ideal cargo, but since only a few manufacturers have assembly plants at destinations, such

shipments are limited; (2) in large boxes, completely assembled, except that the wheels, bumpers, etc., are removed; and (3) unboxed and completely assembled as seen on the street. It costs shippers from \$40 to \$45 to box an automobile for shipment, and with the rate the same whether a car be boxed or unboxed, there is little incentive for manufacturers to box their cars. Prior to April 1933 defendants did not accept unboxed automobiles, and subsequent thereto the rate quoted for such shipments was \$3 per ton of 40 cubic feet higher than that quoted for boxed shipments. This differential was later reduced to \$2 per ton, then to \$1 per ton, and finally abolished. Difficulties of stowage and consequent loss of space which at times could be utilized for other cargo, in the opinion of both complainant and defendants, makes the cost of transporting unboxed automobiles greater than the cost of transporting boxed shipments. Because of the risk of damage nothing can be placed on top of or close beside an unboxed car, while with boxed shipments space on top of or between boxed cars can be utilized. Both complainant and defendants have overlooked, apparently, the possibility that the removal of the differential between boxed and unboxed automobiles may involve a violation of one or more sections of the Shipping Act, 1916. While the record affords no basis for a specific finding of unlawfulness in this respect nor the determination of a proper differential, in view of the large number of cars moving, the importance of automobiles in our export trade, the shortage of cargo space that has developed, and the fact that the carriers all admit they are operating at a loss, the Department will give consideration to the question of instituting on its own motion an investigation of the failure to maintain a differential, unless the carriers themselves promptly restore a prima facie reasonable differential.

Complainant alleges that each of defendants' vessels sailing on and subsequent to June 15, 1935, was a fighting ship, operated in violation of section 14 of the Shipping Act, 1916. That section provides, as to fighting ships:

That no common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property * * *.

Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Defendants on brief, after a review of court decisions on the subject of fighting ships, contend that a fighting ship is a vessel placed on berth out of regular course at rates less than those charged

on vessels regularly scheduled by the carrier or carriers operating such vessels. Inasmuch as the cases on which defendants rely arose prior to the enactment of the Shipping Act, 1916, which, itself, as quoted above, defines a fighting ship, the decisions in such cases are not necessarily controlling. The thing condemned, however, is clearly a device of some sort by means of which carriers endeavor to drive another carrier out of business. Defendants deny any intention of driving anyone out of business, but admit that one of their purposes in making the rate reductions described herein was to eliminate unnecessary tonnage. One apparent effect of such reductions has been to reduce, temporarily at least, the number of competitive sailings from Canadian ports. It is true that a continuation of the present unremunerative rate level may eventually result in complainant's withdrawal from the trade, although complainant states that it has developed new business, that its carryings have increased, and that it intends to stay in the trade. It is likewise true, however, that a continuation of the present rate level is equally liable to make it necessary for one or more of the defendants to withdraw from the trade.

There is nothing in the record to show that defendants have altered the normal operation of their ships. It has been defendants' practice for years to have a vessel on berth ready to receive cargo at all times. When one vessel has completed loading, within a comparatively short time another is placed in position. Beginning February 1, 1935, and until the end of October of that year defendants maintained four sailings each month. Such sailings were spaced from 4 to 10 days apart, dependent upon the amount of cargo at the time available. Despite allegations to the contrary, there is no evidence of any disarrangement of sailing frequency because of complainant's entrance into the trade.

Defendants claim that the entrance of complainant into the trade was but one factor in bringing about their rate reductions and that such reduction was not directed particularly against complainant. They had faced increasing competition, involving rate cutting, for some time, including competition from carriers operating from Canadian ports and therefore not subject to the Department's jurisdiction. Rate cutting by carriers out of Canada and the Gulf, coupled with the advantage which those carriers enjoy because of the inland rate differentials heretofore shown, created a combination of circumstances sufficient to draw considerable traffic from New York. The establishment of additional services by the Kerr Steamship Co. and complainant from North Atlantic ports of the United States finally crystallized into definite action the necessity,

long apparent to defendants, of protecting their position in the trade.

The shipping act itself recognizes that a carrier may reduce rates below a fair and remunerative basis with the intent of driving a competitive carrier by water out of business without such action constituting the operation of a fighting ship. This is apparent when the fighting ship prohibition in section 14 is compared with section 19 of that act. The fighting ship prohibition does not condemn rate reductions per se, but makes it unlawful to use a vessel in any particular trade whether in interstate or foreign commerce "for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade"; whereas section 19 provides that if any common carrier by water in interstate commerce reduces its rates "below a fair and remunerative basis, with the intent of driving out or otherwise injuring a competitive carrier by water," the carrier cannot increase its rates unless after hearing the Department finds that such proposed increase "rests upon changed conditions other than the elimination of said competition." Broadly speaking, the Department's powers over carriers in interstate commerce are considerably greater than those over carriers in foreign commerce, yet under section 19 any common carrier by water in interstate commerce which reduces its rates "below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water" is merely forbidden to increase such rates unless after hearing the Department finds that such proposed increase "rests upon changed conditions other than the elimination of said competition." Section 14 makes no distinction between fighting ships in interstate commerce and fighting ships in foreign commerce, and the broad interpretation of the term "fighting ship," which complainant seeks, is not compatible with the provisions of section 19 just quoted. On this record no showing has been made that defendants have at any time resorted to any device that involved the operation of a fighting ship.

Inasmuch as no violation of section 14 has been shown and because of the fact that the commerce involved is not "between foreign ports", the provisions of section 14a of the Shipping Act, 1916, are not applicable and the relief sought thereunder cannot be granted. Inasmuch as there is no evidence that the shipping act has been violated, no grounds exist upon which to base an award of reparation.

There remains for consideration defendants' refusal to permit complainant to become a party to agreement no. 3578 and to modify the rotation of sailings agreement (no. 3578-A); and complainant's

request that these agreements and the pooling agreement (no. 3578-B) be canceled.

The request that the pooling agreement be canceled will be considered first. There is nothing in the record to indicate that complainant has at any time applied for participation in this particular agreement or that such agreement has in any way injured complainant. The agreement, to which the defendant, American South African Line, Inc., is not a party, sets forth a formula whereby the parties thereto apportion their combined revenue after certain specified deductions. There is no showing that it has in any way aided the carriers parties thereto, or the American South African Line, Inc., in the present rate war, or that it is in any way detrimental to the commerce of the United States or otherwise of a character which the Department is permitted to cancel or modify under authority of section 15 of the Shipping Act, 1916. The request of the complainant that this agreement be disapproved accordingly must be denied.

Agreements providing for rotation of sailings, such as agreement no. 3578-A, are valuable to both carriers and shippers. They tend to coordinate the number and frequency of sailings with the flow of cargo offering and to make less frequent occasions on which there is either a surplus or a scarcity of space. It is unquestionable that the value of such an agreement would be enhanced if participated in by all lines in a trade, but that is not to say that the mere failure to admit all lines to participation warrants disapproval of the agreement. Actually, the existence of the agreement has to some extent proven advantageous to complainant and also to other nonconference carriers. It is now possible for each such carrier to so arrange its sailings as to be on berth with only one of defendants' vessels on berth at the same time. Without such an agreement each defendant would have been free to place a vessel on berth at any time, and complainant might then have found itself faced with the necessity of meeting the competition of several of defendants' vessels at the same time. It is perhaps well to point out here that although in this particular instance all parties to the rate-fixing agreement in the trade have agreed to rotate sailings, it is by no means necessary that this be the case. Rotation of sailings agreements, like pools, can and do exist without being participated in by all members of the rate-fixing group to which such members are parties. The existence in this trade of the seven defendants, like the existence of nonconference carriers, may afford sufficient service to shippers to make it difficult in the future for complainant to attract cargo, but complainant has not indicated how cancellation of this agreement will in any way benefit it. It has

encountered no difficulty because of this agreement. It is free to continue its monthly sailings or even to increase its sailings with that agreement in effect, and there is no reason for concluding that its cancelation would reduce the amount of competition which it must meet. On the contrary, it is more logical to believe that in the absence of a rotation of sailings agreement competition would become keener for reasons already indicated. In short, complainant has failed to show that this particular agreement has been injurious to it, or that it is detrimental to commerce or otherwise within that class of agreements which section 15 of the shipping act authorizes this Department to cancel.

Agreement no. 3578 is the agreement under which defendants are permitted to agree upon the freight rates they will charge with exemption from the antitrust laws. Article 5 thereof provides:

Any person, firm or corporation, regularly engaged as a common carrier by water in the trade covered by this agreement may become a party to this agreement and a member of the conference upon unanimous assent of the parties hereto, by affixing his, their, or its signature hereto, or to a counterpart hereof, and giving written notice thereof to the United States Shipping Board, or its successor in authority. No eligible applicant shall be denied admission to conference membership as above provided except for just and reasonable cause.

As hereinbefore stated, defendants in denying formally complainant's application for participation in the conference, on June 27, 1935, did not furnish complainant with any reason for such denial. Under the terms of the agreement an application for admission may not be denied "except for just and reasonable cause," and while there is no specific requirement that an applicant be advised why it is believed ineligible, such information should have been furnished. An applicant may conscientiously believe it is eligible, and unless advised by an authorized representative of the conference why it is regarded as ineligible such applicant is handicapped in presenting to the Department for determination issues arising because of such denial. The record before the Department has disclosed defendants' reasons. They did not consider complainant had made an adequate showing of its financial ability to continue permanently in the trade, and also took the position that at the time of complainant's formal application complainant was not regularly engaged in the trade. Complainant was not requested to disclose his financial position, however, and it cannot be disputed that events subsequent to the denial of the application have reflected considerable financial strength; and certainly the argument that complainant was not regularly engaged in the trade has today no force whatsoever. Defendants point to the fact that "Com-
1 U. S. S. B. B.

plainant's application for admission to the conference (3578) has always been coupled with the demand that defendants make a place for complainant in their rota of sailings maintained under agreement no. 3578-A * * *. Complainant does not ask to join the conference unless this demand be complied with." Over and above these reasons, however, is evident the conviction on the part of defendants that the North Atlantic trade is overtonnaged, and that it is impossible for all carriers now operating from Atlantic coast ports, the Gulf, and Canadian ports to South Africa to operate on a financially profitable basis. Reference has heretofore been made to the large amount of unused space in defendants' vessels in 1935, a condition which continued to exist until after the removal of the differential between boxed and unboxed automobiles. Complainant states that it has developed new business but fails to furnish any evidence in support of such statements. Any such new business developed, of course, may possibly be attributable to the existing low level of rates, admitted by all to be unremunerative.

As indicated above, defendants had at least four different reasons for their refusal to admit complainant to membership in the conference. Although it appears that at the time of the hearing one, and possibly two, of those reasons no longer existed, it has not been established on this record that the other two reasons are not valid grounds for the action of the defendants. Whether or not the agreement itself operates to the detriment of the commerce of the United States, or otherwise falls within the class of agreements which the Department may disapprove, is a separate question.

The power of the Department to disapprove agreements between carriers is derived from the second paragraph of section 15 of the Shipping Act, 1916, which reads as follows:

The board 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.

Apart from allegations concerning sections 14 and 14a already disposed of, complainant has made no attempt to prove that the agreement itself or any acts of defendants are in violation of the shipping act, nor has it alleged that the agreement is unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors. There remains to be considered, therefore, only whether the agreement is unjustly discriminatory or unfair as between car-

riers and whether it operates to the detriment of the commerce of the United States.

Although complainant has submitted no competent evidence to show the actual financial losses sustained by it, it is unquestionable that complainant has suffered severe financial losses because of the existing rate war. It is also unquestionably true, however, that defendants have suffered severe losses because of the rate war. Wherein the agreement itself is responsible for complainant's losses, or is actually unjustly discriminatory or unfair as between carriers, complainant does not show.

If the existence of the agreement were the cause of the low rates the Department's course of action would be reasonably clear. Whatever their immediate effect, rates unremunerative or noncompensatory are in the long run detrimental to our commerce, for our commerce embraces not only cargo moving but the instrumentalities employed in moving such cargo. Both complainant and one of the defendants, American South African Line, are part of the American merchant marine, and section 1, Merchant Marine Act, 1920, contains an admonition that in the administration of the shipping laws there be kept always in view the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of an adequate privately owned merchant marine.

In determining whether a particular agreement should be disapproved under authority of section 15, the Department must weigh all facts involved in the light of this policy. Had the power been given this Department to compel complainant, defendants, and all other carriers in the trade to raise their rates, the situation is such that that power would now be exercised. Were the agreement under consideration actually responsible for the low rates in the trade, the Department's course of action under existing power would also be clear. There is nothing in the record, however, to warrant the conclusion that the agreement has brought about the unremunerative rate level. On the contrary, the provision in the agreement requiring unanimous consent for rate changes gives ground for concluding that in the absence of the agreement the competitive situation would have brought about a rate war at an earlier date than was the case. Furthermore, were the agreement to be disapproved at this time, thus leaving each of defendants free to charge whatever rates it desired, there is reason to believe that rates might go still lower, to the greater detriment of the American merchant marine.

Complainant appears to have had no difficulty because of this agreement in securing cargo for its vessels. It is free to make as many sailings as it desires, and in that respect has an advantage not possessed by defendants because of the rotation of sailings agreement.

Restoration of rates to a remunerative level is apparently complainant's main concern.

A rate war has previously existed in this trade, and rates are not now as low as the level then reached. Complainant itself at certain times during the present disturbance has been charging lower rates on some commodities than defendants. Moreover, complainant eliminated the differential between boxed and unboxed automobiles prior to such action by defendants. Defendants have been in the trade for many years, three of them since 1896. The steps taken by them indicate a natural, though perhaps ruinous, attempt to meet and overcome everincreasing competition and retain business developed by them over a period of years through good times and bad. However disastrous to all concerned a rate war in our foreign commerce may prove, the Congress has not given this Department the power to terminate it.

The Department is not without sympathy for the position in which complainant finds itself, but nothing in the shipping act prohibits carriers from using every legitimate means to wage economic warfare in their efforts to secure or retain traffic. The only weapon apparently used by defendants is the reduction of rates to a level unremunerative for themselves as well as for their competitors, and this the statute does not prohibit.

The Department finds that defendants are not shown to have operated fighting ships from North Atlantic ports of the United States to South and East Africa in violation of section 14 of the Shipping Act, 1916; and that in the absence of such a finding the provisions of section 14a of that act are not applicable. The Department further finds that on June 27, 1935, defendants were justified in denying complainant's application for admission to the Conference (agreement no. 3578); that unremunerative and noncompensatory rates are detrimental to the commerce of the United States; that the existence of such rates in the trade involved is not the result of defendants' agreement no. 3578; that agreements nos. 3578, 3578-A, and 3578-B are not unjustly discriminatory or unfair as between carriers, and do not operate to the detriment of the commerce of the United States; and that complainant is not entitled to reparation. An appropriate order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 120

SEAS SHIPPING COMPANY, INC.

v.

AMERICAN SOUTH AFRICAN LINE, INC., ET AL.

ORDER

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 Department having, on the date hereof, 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.

[SEAL]

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

AUGUST 1, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 180

JOHNSON PICKETT ROPE COMPANY

v.

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

Submitted May 13, 1936. Decided August 15, 1936

Rates on Manila rope from the Philippine Islands to the United States not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

Gardner D. Howie, John T. Money, and John T. Bailey for complainant.

Elkan Turk, Herman Goldman, Leo E. Wolf, A. A. Alexander, J. A. Stumpf, R. H. Specker, and James H. Condon for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

The examiner's report recommending dismissal of the complaint was excepted to by complainant. The findings recommended by the examiner are adopted herein.

Complainant, a corporation existing under the laws of the Philippine Islands, is a manufacturer of Manila rope, which it ships from the Philippines to the United States. Defendants are engaged in the transportation of property by water between Manila, Philippine Islands, and the United States, and in respect of such transportation are common carriers by water in interstate commerce.

By complaint filed April 5, 1935, it is alleged that the rates charged by defendants for the transportation of Manila rope from Manila, P. I., to United States ports were and are unduly prejudicial, unjustly discriminatory, and unjust and unreasonable in violation of sections 16, 17, and 18 of the Shipping Act, 1916, to the extent such rates exceed the rates on Manila hemp, and in comparison also with the rates on other commodities from the Philippine Islands to the United

States, and with the rates on rope and hemp between other comparable points. Lawful rates for the future and reparation are sought. Except as otherwise specified, rates will be stated in amounts per ton of 2,240 pounds.

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

The rates complained of are \$35 to Atlantic and Gulf ports of the United States and \$23.65 to Pacific ports, with no limitation as to measurement. It is shown that these rates were paid to defendants, Dollar Steamship Lines, Inc., Ltd., and Barber Steamship Lines, Inc., on numerous shipments of rope made by complainant during a period of approximately two years prior to the filing of the complaint. The other defendants are named as transshippers only. Defendants' rates on hemp from the Philippines to the United States are \$2.25 per bale to Atlantic and Gulf and \$1.50 per bale to Pacific ports, with a limitation that these rates apply to bales not in excess of 13 cubic feet. A bale of hemp ready for shipment weighs approximately 280 pounds, so that eight bales make a ton of 2,240 pounds. Computed on a weight basis, the rates on hemp amount to \$18 per ton to Atlantic and Gulf, and \$12 per ton to Pacific ports.

Hemp is shipped in bales measuring, with wrapper, approximately 13 cubic feet, and stows approximately 104 cubic feet to the ton. Rope is shipped in coils of varying weight and measurement. Figures of record taken from the bills of lading of defendant Dollar Line covering rope shipments made by complainant via that line indicate that the rope involved in such shipments stowed between 68 and 69 cubic feet per ton. The sizes of the rope included in these shipments are not shown. There is other testimony for complainant that the average stowage of Manila rope is about 70 to 75 cubic feet per ton, but that the stowage increases as the size of the rope decreases. Defendants produced figures based upon approximate cubic measurements of Manila rope manufactured in the United States contained in a pamphlet issued as information to exporters of rope, which indicate that a ton of rope varies widely in its cubic displacement according to the size of the rope. These figures show that rope $\frac{3}{8}$ of an inch in diameter measures 138.95 cubic feet to the ton, and as the size of the rope increases, up to $\frac{5}{8}$ of an inch in diameter, the measurement decreases to 60.49 cubic feet. With still larger sizes of rope, up to $1\frac{5}{8}$ inches in diameter, the measurement varies from 69.58 to 80 cubic feet. For sizes $\frac{3}{8}$ of an inch to 1 inch the average measurement is shown to be 93.50 cubic feet, and for sizes $\frac{3}{8}$ of an inch to $1\frac{5}{8}$ inches the average is shown to be 88.73 cubic feet. Complainant's chief wit-

ness testified that for the past year they had been concentrating on the smaller sizes of rope, which are a little more profitable, but ordinarily sell more rope of the large sizes than of the small sizes.

Using an average stowage of 70 cubic feet per ton of rope and 104 cubic feet per ton of hemp, complainant draws a comparison between the rates on these commodities to show that on a measurement basis the rate on rope is approximately three times the rate on hemp, and asserts that the spread between these rates, both on a weight and measurement basis, is unduly prejudicial to complainant and unduly preferential of and advantageous to the hemp importer. The record shows that the cubic displacement of a ton of rope is a variable factor, depending upon the size of the rope, and, therefore, the comparison of the rates on a measurement basis is not well founded. Undue prejudice or preference is not established by a mere showing of lower rates on a competitive commodity. There must also be a showing of the character and intensity of the competition, of the specific effect of the rate relation on such competition, and that the difference has operated to shipper's disadvantage in marketing the commodity. There is no direct competition between rope and hemp, but Manila hemp manufactured into rope in the United States is sold in competition with complainant's product.

The record shows that the importations of rope from the Philippines increased from 2,925,484 pounds in 1923 to 4,942,347 pounds in 1932, and 9,863,119 pounds in 1934, and for the first five months of 1935 amounted to 6,536,311 pounds. With the exception of the years 1931 and 1932, there has been an uninterrupted increase in the volume of rope imports from the Philippine Islands since 1921. The movement of Manila hemp from the Philippines to the United States decreased from 235,258,240 pounds in 1923 to 57,236,480 pounds in 1932, and then increased to 93,130,240 pounds in 1934.

By act of Congress approved June 14, 1935, it is provided:

That effective May 1, 1935, and for three years thereafter, the total amount of all yarns, twines, cords, cordage, rope, and cable, tarred or untarred, wholly or in chief value of Manila (abaca) or other hard fibre, produced or manufactured in the Philippine Islands, coming into the United States from the Philippine Islands, shall not exceed six million pounds during each successive twelve months' period, which six million pounds shall enter the United States duty free.

Complainant's attorney in fact and principal witness testified that the rates complained of will not prevent the bringing in of the full legal limit of 6,000,000 pounds of Philippine rope per year.

The rate on rope to Atlantic and Gulf ports exceeds the rate on hemp by approximately $\frac{3}{4}$ cent per pound and to Pacific Coast ports by approximately $\frac{1}{2}$ cent per pound. The import price of Philippine rope has been substantially lower than the factory price of Amer-

ican rope for a number of years, as evidenced by figures of record, as follows:

Year	F. o. b. factory price American rope	Import price Philippine rope	Year	F. o. b. factory price American rope	Import price Philippine rope
	<i>Per pound</i>	<i>Per pound</i>		<i>Per pound</i>	<i>Per pound</i>
1921.....	\$0. 1843	\$0. 1119	1929.....	\$0. 1936	\$0. 1371
1923.....	. 1617	. 1075	1931.....	. 1506	. 1015
1925.....	. 2157	. 1407	1933.....	. 1210	. 0825
1927.....	. 2140	. 1471			

Complainant's attorney in fact testified that "as a rule our prices are lower than the American manufacturers'; there is no question about that." This witness gave the wholesale price of Philippine rope in the United States as 10½ cents to 11 cents per pound, whereas the record indicates that the wholesale price of American rope f. o. b. factory is 15½ cents less discounts, which result in a net price of approximately 14½ cents per pound. It seems clear from the record that the difference between the rates on Manila rope and hemp has not materially affected the movement or marketing of either commodity.

The other commodities referred to by complainant bear no relation to rope, and complainant has not shown that its product is prejudiced in any way by the rates on such other commodities. The record affords no basis for a finding of undue prejudice or preference.

In support of its allegation that the rates assailed were and are unreasonable, complainant compares them with the rates on hemp from the Philippines to the United States and with the rates on rope and hemp between other points. Hemp is a raw material used in the manufacture of rope, and is of much lower value than rope as shown by a comparison of import values of record as follows:

	1933	1934	1935 (5 months)
Rope.....	<i>Per pound</i> \$0. 0825	<i>Per pound</i> \$0. 0927	<i>Per pound</i> \$0. 0840
Hemp.....	. 0253	. 0296	. 0302

In the process of manufacturing hemp into rope in the United States there is a loss of 3 to 7 pounds of hemp per bale. The wrappers on a bale of hemp weigh about 4 pounds and have no value, so that the total loss is from 7 to 11 pounds or 2.5 to 3.9 percent of each bale. The record does not show that any allowance is made for this loss in either the merchandising or transportation of hemp. Hemp moves

in much larger volume than rope and is less expensive to handle and stow. It is shipped in bales of uniform weight and measurement, can be stowed in any part of the ship, and is also used for topping off the cargo. Rope is shipped in coils of varying weight and measurement and requires special stowage. If stowed too near the boilers, the heat will dry out the oil which is necessary to the longevity of the rope. The record does not justify a finding that the rates complained of are unreasonable when compared with the rates on hemp.

The rates complained of are alleged to be unjust and unreasonable as compared with defendants' rates on many other commodities from the Philippines to the United States. The commodities referred to do not compete with, and in no instance are they analogous to, rope. They vary in character, volume of movement, value, and stowage, and by comparison are of little or no help in determining the reasonableness of the rates complained of.

Complainant refers to the fact that defendants made a through rate on rope of \$24 per ton from the Philippines to Puerto Rico, with transshipment from New York, absorbing the cost of the transportation from New York to Puerto Rico, a distance of about 1,400 miles, which amounts to 40 percent of the through rate, and absorbing 60 percent of the cost of transfer to the on-carrying line at New York. It was testified on behalf of defendants that this rate was established at complainant's request to enable it to compete with rope from England, Germany, and other foreign countries. With the aid of this rate, complainant was able to build up its business in Puerto Rico, but the record indicates that this business has since collapsed and that the rate now is nothing more than a paper rate. Considering the special circumstances and competitive conditions which induced the rate referred to, in a different trade, it is of little, if any, evidentiary value in determining the reasonableness of the rates complained of.

Complainant also compares the relation between the rates on rope and hemp from the Philippines to the United States with the relation between defendants' rates on the same commodities from the Philippines to the Orient, showing that to the Orient rope takes a lower rate than hemp. It is further shown that the rate on rope from Mexico to the United States via the New York and Cuba Mail Steamship Company varies from 16% to 66% percent in excess of the rate on sisal, and from Havana, Cuba, to New York the rates on these two commodities via the same line are the same. From Hamburg, Rotterdam, and Bordeaux to Valparaiso, Chile, the Hamburg-American Line will carry rope for about 8 percent more than hemp, and from Rotterdam and Bordeaux to Valparaiso the Grace Line and French Line, respectively, will carry rope for about 10 percent less than hemp.

Defendants showed that from the Philippines to various destinations, including Buenos Aires and Rotterdam, their rate on rope is 100 percent in excess of the rate on hemp. The record contains no evidence that conditions in any of the trades referred to are similar to the conditions in the trade involved in this proceeding.

The Department finds that upon this record defendants' rates on Manila rope from the Philippine Islands to the United States have not been shown to be unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 180

JOHNSON PICKETT ROPE COMPANY

v.

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

ORDER

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 Department, 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.

[SEAL.]

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

AUGUST 15, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 374

MACON COOPERAGE COMPANY
v.
(ARROW LINE) SUDDEN & CHRISTENSON ET AL.

Submitted August 8, 1936. Decided September 3, 1936

Defendants' rate on oak whiskey barrels from Savannah, Ga., to Los Angeles, Calif., not shown to be inapplicable, unreasonable or otherwise unlawful. Complaint dismissed.

Harry E. Nottingham for complainant.

W. M. Carney, W. P. Rudrow, and F. D. M. Strachan, Jr. for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

No exceptions were filed to the report proposed by the examiner. His findings are adopted herein.

Complainant is a corporation engaged in the cooperage business at Macon, Ga. By complaint filed March 5, 1936, it alleges that defendants' rates of \$1.03 and \$1.10 on empty oak liquor barrels from Savannah, Ga., to Los Angeles, Calif., were, and that the rate of \$1.10 still is, unduly prejudicial, unjustly discriminatory, and unjust and unreasonable, in violation of sections 16, 17 and 18 of the Shipping Act, 1916. A lawful rate for the future and reparation are sought. Rates are stated in cents or dollars and cents per 100 pounds.

Section 17 does not apply to common carriers by water in interstate commerce. The alleged violation of that section will not, therefore, be considered further.

Effective March 21, 1934, defendants established a commodity rate of \$1.03 on tight wooden barrels, set up, minimum weight 12,000 pounds, from Atlantic Coast ports, including Savannah, to Pacific Coast ports, including Los Angeles, which was increased to \$1.10 effective October 3, 1935. Since September 28, 1934, they have maintained a commodity rate of 87.5 cents, minimum weight 20,000 pounds, on wooden malt liquor barrels from and to the same ports. From September 29, 1934, to August 24, 1935, both dates inclusive, the tariff description of the latter barrels read "Barrels, Malt liquor, wooden." Effective August 25, 1935, this description was changed to "Barrels, Malt liquor, wooden, viz.: Ale, Beer, Beer Tonic, Porter or Stout."

Complainant ships whiskey barrels, which are tight barrels made of scaly bark, forked leaf, white oak. Of nine shipments which were referred to, all exceeded 20,000 pounds, except one, which weighed 18,900 pounds. The rate charged in each instance was that provided for tight wooden barrels, set up. The applicability of this rate to shipments made on or subsequent to August 25, 1935, is not disputed, but those made prior to that date were sold by complainant on the basis of the rate on wooden malt liquor barrels, and as to these it contended at the hearing that the tariff description "Barrels, Malt liquor, wooden" embraced whiskey barrels and that the legally applicable rate, therefore, was 87.5 cents.

This question was originally considered on the informal docket, and certain documents of record there were introduced by complainant in this proceeding. Three of them, it is said, show that the rates charged on complainant's shipments were excessive, that the description "Barrels, Malt liquor, wooden" was indefinite, and that the carriers took steps to limit its application by adding thereto the words "Ale, Beer, Beer Tonic, Porter or Stout." From one it appears that in July 1935 the general manager of defendant States Steamship Company informed complainant that he personally felt it was within its rights in contending that the rate of 87.5 cents was applicable to its shipments; from another that trans-continental railroads about the same time proposed changing the description in their tariffs from "Barrels, Malt liquor, wooden" to "Barrels, Malt liquor, wooden, viz.: Ale, Beer, Beer Tonic, Porter or Stout," and from the third that for competitive and clarification purposes the tariff publishing agent of defendants and other carriers by water proposed to make the same change. They contain no facts showing that oak whiskey barrels are the same as wooden malt liquor barrels, nor do the other documents referred to. Complainant contends that whiskey barrels are malt liquor barrels "inasmuch as the common understanding of the word 'liquor' is taken to mean whiskey and all whiskey is man-

ufactured of a mixture of malt and cereal grains." It says, in effect, that whiskey is malt liquor, but there is no evidence to support the assertion.

Complainant also points out that western classification, by which defendants' tariffs were and are governed, did not carry a rating on wooden malt liquor barrels, as such, but did provide a specific rating on wooden ale, beer or cereal-beverage barrels. From sometime prior to April 1935, when the first shipment here involved moved, to August 25, 1935, western classification included ale, beer, beer tonic, cereal beverage, porter, and stout under the heading "LIQUORS, MALT." Ale, beer, and cereal-beverage barrels, wooden, minimum weight 20,000 pounds, were rated class D. Tight wooden barrels, N. O. I. B. N., minimum weight 12,000 pounds, were rated fourth class. Defendants' class-D rate was 87.5 cents and their fourth-class rate was \$1.805. The commodity rate on "Barrels, Malt liquor, wooden" removed the application of class rates on wooden ale, beer, beer-tonic, cereal-beverage, porter, and stout barrels. As stated above, complainant does not dispute the applicability of the rates charged on or subsequent to August 25, 1935. In effect, therefore, it concedes that whiskey barrels are not the same as ale, beer, beer-tonic, porter or stout barrels, and there is no evidence that they are the same as cereal-beverage barrels.

The evidence consists mainly of a comparison of whiskey barrels with beer barrels, which, admittedly, do not compete with each other. Complainant's barrel is charred, has a capacity of about 50 gallons, and weighs 90 pounds. The staves are 35'' long, and the heads 20 $\frac{1}{8}$ '' in diameter. Both staves and heads are 1'' thick. The hoops, eight in number, are made of steel and differ in width and gauge. The circumference at the bilge varies between 78'' and 80 $\frac{1}{2}$ ''. Defendants' witness testifies, without objection, that figures furnished him on rye barrels indicate that the whiskey barrel has a capacity of 47 to 49 gallons, is 35'' long, 20 $\frac{1}{2}$ '' in diameter at the chime, 24'' in diameter at the bilge, and weighs 82 pounds. This weight is coincident, or nearly so, with the testimony of complainant's witness that it has made whiskey barrels of possibly 83 or 84 pounds, when it used a lighter stave or head. The gauge of the hoops also affects the weight.

The figures as to beer barrels were obtained by witnesses for complainant and defendants from different sources. They were received without objection by either side. According to the information of complainant's witness, a standard beer barrel is pitched, has a capacity of 31 gallons, and weighs from 115 to 120 pounds. The staves are 31'' long, 1 $\frac{3}{4}$ '' thick at each end, and 1 $\frac{7}{16}$ '' thick at the bilge. The heads are 18 $\frac{1}{2}$ '' in diameter and 1 $\frac{3}{4}$ '' in thickness. Defendants' witness testifies that according to his information the

so-called half beer barrel is, roughly, $24\frac{1}{2}$ " long, $14\frac{3}{4}$ " in diameter at the chime, 61" in circumference at the bilge, and weighs 122 pounds. The difference between complainant's and defendants' weight figures is admitted to be a reasonable variation.

Using the above figures for rye barrels and half beer barrels, defendants show, by multiplying the square of the bilge diameter by the length of the barrel, that the half beer barrel requires approximately 5.33 cubic feet of space, or only one cubic foot for each 22.7 pounds, whereas the rye barrel requires approximately 11.6 cubic feet, or one cubic foot for every 7 pounds. On the basis of complainant's figures, its barrel, by the same method of calculation, requires between 12.48 and 13.29 cubic feet, or approximately one cubic foot for 6.77-7.21 pounds. Its witness was unable to produce figures as to the bilge measurement of the so-called standard beer barrel, and while his testimony indicates that puncheons and hogsheds, which take the same rate as beer barrels, are larger than either beer or whiskey barrels, there is no evidence on which their weight density can be computed.

The price of complainant's barrels, delivered at Los Angeles, ranges from \$5.50 to \$6.00, and its profit thereon from 25 to 60 cents, each. For beer barrels, according to information received by its witness, coopers on March 21, 1935, were asking from \$3.00 to \$10.60 apiece. Keystone eighths, quarters, halves, and wholes were priced at \$3.00, \$4.00, \$5.75 and \$10.50, respectively, and Peerless at ten cents higher. After July 4, 1935, this witness was informed, the prices were twenty-five cents lower. Where the coopers referred to were located and whether their prices were quoted c. i. f. was not disclosed, but his informant stated that it had a few halves and quarters that it would like to move at the prices indicated f. o. b. Baltimore.

Neither the beer-barrel nor whiskey-barrel traffic is heavy. Beer barrels moved in considerable volume to the Pacific Coast shortly after the repeal of the Eighteenth Amendment to the Constitution, but their movement has so dwindled that now there are only occasional small-lot shipments. Complainant's shipments and several less-than-carload lots from the North Atlantic appear to be the only whiskey barrels shipped since the spring of 1935. Defendants contrast this tonnage with the movement of rosin and oyster shells. In the course of a normal year, it is testified, defendant Sudden & Christenson handles probably 7,500 weight tons of rosin and a greater volume of oyster shells. They also compare their earnings on oyster shells, rosin, and beer barrels with those derived from carrying whiskey barrels. Whereas whiskey barrels pay between 7 and 8 cents per cubic foot, oyster shells are said to pay 14.7 cents, rosin approxi-

mately 16 cents, and beer barrels approximately 20.7 cents, per cubic foot. Complainant says "it would appear that the revenue per cubic foot of a coca-cola barrel weighing 50 lbs., which under the tariff would move under the \$1.10 rate, would be much less in proportion than the revenue from a whiskey barrel weighing 90 lbs." and that "it, therefore, is reasonable to say that if a 50 lb. barrel and a 90 lb. barrel would move under the same rate there should not be such a wide difference between the rate on a 90 lb. barrel and a barrel weighing 115 lbs. as now exists." Besides the weight, the only evidence presented as to coca-cola barrels is the testimony of complainant's witness that they are the lightest barrels it ever made to hold fifty gallons and that they cannot be used for whiskey.

According to the record, the all-rail rate from Savannah to Los Angeles on wooden malt liquor barrels, minimum weight 20,000 pounds, has since sometime prior to April 1935 been \$1.73, plus an emergency charge of 5 cents, and on tight wooden barrels, minimum weight 16,000 pounds, \$1.92, plus an emergency charge of 5 cents. Complainant points out that the rate of \$1.92 is approximately 110.97 per cent of the \$1.73 rate and asserts that, similarly, defendants' rate on tight wooden barrels should be no higher than 110.97 per cent of their rate on wooden malt liquor barrels, or 97 cents. It also points out that defendants' rate on wooden malt liquor barrels is about 50.6 per cent of the rail rate thereon, and suggests that their rate on tight wooden barrels should be 50.6 per cent of \$1.92, or 97 cents, to be in proper proportion. The facts of record do not justify condemnation of the rates existing at present or in the past.

The Department finds that the rates assailed have not been shown to be inapplicable, unreasonable or otherwise unlawful. An order dismissing the complaint will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 374

MACON COOPERAGE COMPANY

v.

(ARROW LINE) SIDDEN & CHRISTENSON ET AL.

ORDER

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 Department having, on the date hereof, 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.

[SEAL]

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

SEPTEMBER 3, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 167

ARGONAUT STEAMSHIP LINE, INC., ET AL.

v.

AMERICAN TANKERS CORPORATION

Submitted August 16, 1935. Decided September 19, 1936

Issues presented by the complaint having become moot by the voluntary cancellation of defendant's tariff, complaint dismissed.

Roscoe H. Hupper, Burton H. White, and Robert C. Thackara for all complainants and interveners except Calmar Steamship Corporation and Isthmian Steamship Company.

Russell T. Mount, H. W. Warley, and E. J. Karr for complainant Calmar Steamship Corporation.

C. S. Belsterling and T. F. Lynch for complainant Isthmian Steamship Company.

H. E. Manghum for defendant.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Complainants allege that defendant's eastbound rates on lumber and shingles from Pacific Coast ports to Atlantic Coast ports of the United States, by way of the Panama Canal, which are lower by substantial percentages than the rates charged by complainants and by all other common carrier steamship lines operating in the eastbound intercoastal trade, were made or arrived at deliberately for the purpose of securing an undue proportion of the shipments of lumber and shingles offered for transportation; that such rates will not permit the upbuilding of the trade and continued maintenance of proper services as intended by the various shipping acts; that defendant avails itself unduly of the protection of the stabilized rate structure which has been provided by complainants; and that the reduced rates

and charges are not just and reasonable. American-Hawaiian Steamship Company and Williams Steamship Corporation intervened in support of the complaint.

At the time the complaint was filed complainants and interveners were engaged in the intercoastal trade, and published eastbound rates of \$12 per 1,000 feet, net board measurement, on lumber, and 65 cents per 100 pounds on shingles. During the time complained of defendant operated a single vessel in the trade and published rates of \$10.50 per 1,000 feet, net board measurement, on lumber, and 60 cents per 100 pounds on shingles.

After full hearing and submission of the case the Department, on its own motion, instituted an investigation into and concerning the lawfulness and the propriety of defendant's tariffs remaining on file with the United States Shipping Board Bureau. Prior to hearing defendant voluntarily cancelled its tariffs, and the proceeding was discontinued. The questions here presented, therefore, have become moot. An order will be entered dismissing the complaint and discontinuing the proceeding.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 167

ARGONAUT STEAMSHIP LINE, INC., ET AL.

v.

AMERICAN TANKERS CORPORATION

ORDER

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 Department, 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, and that this proceeding be, and it is hereby, discontinued.

[SEAL]

(Sgd.) DANIEL C. ROPER,

Secretary of Commerce.

SEPTEMBER 19, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 165

UNITED STATES LINES COMPANY
v.
CUNARD WHITE STAR LIMITED ET AL.

Submitted December 14, 1935: Decided October 9, 1936

Petition to withdraw complaint granted. Proceeding discontinued

Roger Siddall and *Cletus Keating* for complainant.
Parker McCollester and *James S. Hemingway* for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Complainant and defendants are common carriers by water. Complainant, under American registry, and defendant Cunard White Star Limited, under British registry, operate between New York, N. Y., and Liverpool, England. Defendants Bibby Line Limited, British & Burmese Steam Navigation Company Limited, and Burma Steamship Company Limited, all under British registry, operate collectively under the trade name of Bibby-Henderson Line between Liverpool, on the one hand, and Port Said and Suez, Egypt; Port Sudan, Anglo-Egyptian Sudan; and Colombo and Rangoon, India, on the other.

The complaint alleged that defendants are parties to an agreement under which they actively solicit general cargo in the United States and transport it at joint through rates and under through bills of lading in vessels of Cunard to Liverpool, thence in vessels of Bibby-Henderson Line to the destinations named; that denial of complainant's requests that it be admitted as a party to that agreement on an

equal basis with Cunard, or that Bibby-Henderson Line enter into a similar agreement with complainant, makes it impossible for complainant to participate in such traffic in competition with Cunard; that the said agreement gives defendants a monopoly of the traffic in question, and is unjustly discriminatory and unfair to complainant and to the shippers using its line, operates to the detriment of the commerce of the United States, and is in violation of sections 14, 14a, 15, 16, and 17 of the Shipping Act, 1916.

As required by the statute, hearing upon the complaint was duly held. Subsequent to the service of the examiner's proposed report and the filing by complainant of exceptions thereto, complainant served upon defendants and filed with the Department a petition requesting that it be permitted to withdraw the complaint and that the proceeding be discontinued. None of defendants filed an answer to the petition. In the absence of any objection to complainant's request, a determination of the issues appears unnecessary. The petition will be granted, without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues. An appropriate order will be entered.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 165

UNITED STATES LINES COMPANY

v.

CUNARD WHITE STAR LIMITED ET AL.

ORDER

This case, at issue upon complaint and answer on file, having been duly heard, and subsequent thereto complainant having filed a petition requesting that it be permitted to withdraw the complaint and that the proceeding be discontinued, and the Department, 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 petition be, and it is hereby, granted without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues, and that this proceeding be, and it is hereby, discontinued.

[SEAL]

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

OCTOBER 9, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 413

GULF INTERCOASTAL RATES TO AND FROM SAN DIEGO, CALIF. (No. 2)

Submitted September 25, 1936. Decided October 19, 1936

Proposed cancellation of through intercoastal transshipment rates between San Diego, Calif., on the one hand, and United States ports on the Gulf of Mexico and Mississippi River, on the other, found not unlawful. Suspension order vacated and proceeding discontinued.

H. R. Kelly for respondents.

C. F. Reynolds for protestant.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions to the examiner's proposed report were received by the Department seven (7) days after the time for filing exceptions provided by the Rules of Procedure had expired. They accordingly were returned to protestant and not accepted for filing. The conclusions herein do not differ substantially from those contained in the proposed report.

By schedules filed to become effective June 18 and July 8, 1936, respondents proposed to cancel all rates for through intercoastal transportation of freight between San Diego, Calif., and United States ports on the Gulf of Mexico, transshipped at Los Angeles Harbor, Calif., hereinafter called Los Angeles, and to San Diego from points on the Mississippi River and other inland points, transshipped at New Orleans, La., and at Los Angeles. Upon protests of the Harbor Commission of City of San Diego, the operation of the schedules was suspended until October 19 and November 8, 1936, respectively.

A complete description of respondents' type of service, methods of transportation, and manner of naming rates for the routes involved herein is given in *Gulf Intercoastal Rates*, 1 U. S. S. B. B. 516.

Briefly, Inland Waterways Corporation and Mississippi Valley Barge Line Company perform the service from Mississippi River and other inland points to New Orleans, La., the Canal lines, Gulf Pacific Mail Line, Ltd., Luckenbach Gulf Steamship Company, Inc., and Swayne & Hoyt, Ltd. (Gulf Pacific Line) members of Gulf Intercoastal Conference, perform the service between Gulf ports and Los Angeles; The McCormick Steamship Company and Pacific Steamship Lines, Ltd., hereinafter termed on-carriers, perform the service between Los Angeles and San Diego. The traffic moves on through bills of lading at through rates, which consist of the Canal lines' rates to and from Los Angeles, truck and terminal charges for transshipment at Los Angeles, and a so-called arbitrary to cover the service between Los Angeles and San Diego. Rates on shipments from points on the Mississippi River and other inland points are constructed by adding to the through rates from such points to Los Angeles the San Diego arbitrary and the truck and terminal charges at Los Angeles. Hereinafter the term Gulf ports will include such inland points.

The purpose of the suspended schedules is to cancel not only joint through rates but also through routes between San Diego and the Gulf and inland points involved, as to freight transshipped at Los Angeles. If the cancellations become effective, it is proposed to move any such cargo as separate shipments between San Diego and Los Angeles on local bills of lading. It is not known what the resulting rates will be except that they will not be published as through rates. No change in other rates or direct call service is involved, nor is the measure of future rates here in issue.

Respondent Canal carriers offered the following grounds in support of the suspended schedules: (1) Small volume of transshipment cargo between San Diego and Gulf ports, (2) absence of prompt and dependable service between Los Angeles and San Diego, (3) inability of the Canal lines to fix or control the rate factor between Los Angeles and San Diego and the trucking and terminal charges incidental to the transshipment, and (4) the fact that the bulk of traffic between San Diego and Los Angeles moves over competitive rail and motor carrier lines.

Figures of record show that during 1935 the following transshipped San Diego tonnage was carried by respondent Canal carriers between Los Angeles and Gulf ports: By Luckenbach Gulf eastbound 9 tons on 27 ships, an average of 667 pounds per ship, and westbound 128 tons on 24 ships, an average of 5.12 tons per ship; by Gulf Pacific and Gulf Pacific Mail eastbound 29 tons on 47 ships, an average of 1,233 pounds per ship, and westbound 37.1 tons on 48 ships, an aver-

age of 1,547 pounds per ship. At present the only coastwise carriers operating between San Diego and Los Angeles, 92 miles, in connection with Gulf transshipments under joint intercoastal rates, are The McCormick Steamship Company and Pacific Steamship Lines, Ltd. The former operates 13 vessels, but maintains no regular service to San Diego. It calls there only when it has sufficient cargo from northern ports such as Seattle and Tacoma. During the past several months it averaged about one call per week. Between January 16 and September 4, 1935, it maintained regular service to and from San Diego of about two calls per week, but this schedule was discontinued due to insufficient tonnage. McCormick points out that where volume is small the cost per ton of handling freight is greater and asserts that experience has proven that the small volume of San Diego tonnage does not warrant regular service. Failure to maintain a regular service makes it impossible for shippers or originating carriers to know in advance when McCormick steamers will be available at San Diego or Los Angeles for transshipments. Pacific Steamship Lines is now in the hands of a court under Sec. 77 (b) of the Bankruptcy Act, and maintains a regular weekly passenger and freight schedule between San Diego and Los Angeles. In order to maintain its passenger schedule the time is limited at both ports within which to load Gulf transshipments. During the winter of 1935-1936 it did not serve San Diego and abandonment of this service after the summer passenger season is being considered. Although both coastwise carriers solicit San Diego tonnage, McCormick now holds itself out to make direct calls only as inducement offers, minimum tonnage 250 net tons. The record is replete with evidence that these carriers do not furnish prompt and reliable service to San Diego in connection with Gulf intercoastal traffic.

The third ground advanced to justify cancellation of transshipping rates to and from San Diego rests partly upon the uncertainty of truck charges for transfer of tonnage from one wharf to another at Los Angeles. None of respondents fixes or controls those charges, although they are published in their tariffs as part of through rates to and from San Diego. Such rates are published by the truckers in tariffs which are not filed with the Department. The record shows that where those rates have been increased on short notice, water carriers, not having sufficient time to adjust their rates accordingly, were obliged to absorb the increased charges. Where wharfage or demurrage accrues, due to delay in moving transshipment tonnage, they likewise are compelled to absorb the expense. The outport arbitraries, which are also the divisions The McCormick Steamship Company and Pacific Steamship Lines receive out of the intercoastal

through rate, are fixed independently by those two carriers, the other respondents having no control over them and deriving no revenue therefrom.

The last ground is based on the selection of rail and truck transportation between San Diego and Los Angeles by shippers and receivers of freight for the bulk of the Gulf intercoastal tonnage. Respondents do not provide joint rates or routes with rail or motor carriers in this trade. All such rail and truck tonnage between San Diego and Los Angeles moves on local bills of lading and is billed from and to Los Angeles via Canal carriers on local steamship bills of lading. During 1935 Gulf Pacific and Gulf Pacific Mail handled on local bills of lading out of Los Angeles 625.9 tons which had been handled by truck, and to Los Angeles 171.7 tons which were transported to San Diego by some form of transportation other than by McCormick or Pacific Steamship Lines. The record does not disclose the volume of similar tonnage handled by Luckenbach Gulf. Some tonnage may have moved by truck without knowledge of water carriers. The tonnage of record moving over land routes between San Diego and Los Angeles in the Gulf intercoastal trade in 1935 amounted in the aggregate to 797.6 tons, whereas the total shipped over the Pacific coastwise respondents was 203.1 tons.

Protestant urges that the proposed cancellation of transshipping rates will result in unreasonable, unjustly discriminatory, and unduly prejudicial and preferential rates in violation of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. It does not deny any of the facts hereinbefore stated. It shows the total volume of all coastwise traffic received and forwarded at San Diego for each year from June 30, 1930, to June 30, 1935, which ranges from 416,900 tons in 1935 to 772,588 tons in 1930, received, and from 11,448 tons in 1932 to 25,107 tons in 1935, forwarded. The principal commodity received is lumber from north Pacific Coast ports. That forwarded consists chiefly of canned fish, which is not regarded as high revenue cargo by the steamship lines.

In support of its allegations that the suspended schedules will result in unlawful rates if allowed to become effective, protestant (1) compares rates on various commodities applicable over water and land routes, (2) points to past increased rates and apparent proposed increased rates for the future, (3) offers truck cost studies purporting to show likelihood of increased truck rates between San Diego and Los Angeles, and (4) maintains that the suspended schedules unduly prefer Los Angeles competitors. It compares present carload and less-than-carload rates on canned fish, cooking oil, molasses, lumber, oyster shells, rice, cast iron pipe, and cotton piece goods between San Diego and Gulf ports moving over (1) respondents' lines, (2) inter-

coastal water routes between Los Angeles and New Orleans and by motor carrier between Los Angeles and San Diego, (3) rail-and-water routes, and (4) all-rail routes, with rates which it assumes will prevail over respondents' routes if the transshipment rates are cancelled. For example, it shows that the going transshipment rate on canned fish from San Diego to New Orleans is 73 cents per hundred pounds, carload, and \$1.115 less-than-carload; that the truck and water rate is 64.5 cents, carload, and \$1.21 less-than-carload; that the rail and water rate is 67 cents, carload, and \$1.29 less-than-carload; that the all-rail carload rate is 95 cents, minimum 40,000 pounds, and 80 cents, minimum 60,000 pounds, and that the less-than-carload rate, all-rail, is \$3.57. The lowest rate appears to be the truck and water carload rate. These rates are compared with rates of 77 cents, carload, and \$1.165, less-than-carload, which protestant assumes will be the future rates based upon the present intrastate coastwise rates from San Diego to Los Angeles.

Such comparisons, unsupported by evidence of value of commodities, value of service, volume of movement, and other factors commonly considered in determining maximum reasonable rates, are of little probative force. The truck rates are described by protestant as being the result of "cut throat" competition. The rail rates between Los Angeles and San Diego are named in the railroad tariffs as truck competitive rates. It seems clear that they can not be considered maximum reasonable rates.

Moreover, there is no certainty what rates will be applicable to the movement between San Diego and Los Angeles if the through routes and applicable rates here under consideration are cancelled. Protestant refers to certain increases in water rates that have been made in the past and calls attention to truck cost studies being made by California state authorities to indicate the probability that truck rates between San Diego and Los Angeles will be increased. The increased water rates referred to were before the Department in *Gulf Intercoastal Rates, supra*, and were found not unlawful. The reasonableness of the truck rates between San Diego and Los Angeles is a matter within the jurisdiction of the Railroad Commission of the State of California and the findings of that Commission cannot be anticipated by this Department. Furthermore, such rates have little, if any, bearing on the reasonableness of rates subject to the jurisdiction of this Department. This observation also applies to protestant's comparison of the division of through transshipment rates between carriers engaged in foreign and Atlantic intercoastal commerce.

Testimony concerning alleged undue prejudice consists of general statements regarding competition between distributors in Los Angeles

and San Diego. No San Diego shipper or receiver of freight appeared at the hearing, and the general statements made by protestant's witnesses are not sufficient to support a finding of undue preference or prejudice.

It is desirable to point out here that carriers maintaining through routes and joint rates are expected to furnish reasonable service to the public. This record is convincing that respondents cannot profitably maintain reliable and satisfactory service between San Diego and Gulf and inland points, under the present transshipping rates and low volume of San Diego tonnage. As hereinbefore pointed out, however, the measure of rates resulting from the suspended schedules is not here in issue. The purpose of the suspended schedules is not to increase rates applicable on a through route movement, but to cancel the through routes themselves. In the absence of a through route a movement on local bills of lading between Los Angeles and San Diego becomes intrastate. Any movement between points within the same State is not subject to this Department's jurisdiction unless it constitutes part of a through route movement in interstate or foreign commerce. If through routes are again established, the question of the lawfulness of the applicable rates may be the subject of future consideration.

The Department finds the suspended schedules are not unlawful. An order will be entered vacating the suspensions and discontinuing the proceeding.

1 U. S. S. B. B.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 413

GULF INTERCOASTAL RATES TO AND FROM SAN DIEGO, CALIF. (No. 2)

ORDER

It appearing, That by orders dated June 16 and July 1, 1936, the Department entered upon a hearing concerning the lawfulness of cancellation of through routes and rates stated in the schedules enumerated and described in said orders, and suspended the operation of said schedules until October 19 and November 8, 1936, respectively;

It further appearing, That a full investigation of the matters and things involved has been made and that said Department 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, and has found that the schedules under suspension are not unlawful;

It is ordered, That the orders heretofore entered in this proceeding, suspending the operation of said schedules, be, and they are hereby, vacated and set aside, and that this proceeding be discontinued;

It is further ordered, That respondents be, and they are hereby, authorized to file schedules effective on not less than one day's notice announcing the vacation of the Department's suspension order and naming the date upon which the suspended schedules shall become effective.

[SEAL]

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

OCTOBER 19, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 409

INTERCOASTAL SCHEDULES OF HAMMOND SHIPPING COMPANY, LTD.

Submitted October 6, 1936. Decided October 22, 1936

Respondent found not a common or contract carrier by water in intercoastal commerce. Its intercoastal schedule ordered stricken from the files of the Department.

R. C. Robinson for respondent.

C. W. Cook for intervener.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

No exceptions to the examiner's proposed report were filed. The conclusions herein do not differ from those contained in the proposed report.

This proceeding was instituted by the Department on its own motion to determine the lawfulness and propriety of respondent's intercoastal schedules remaining on file with the Department. Swayne & Hoyt, Ltd., intervened at the hearing in support of the Department's motion.

Respondent, Hammond Shipping Company, Ltd., owns and operates six ships, two of which were out of service at the time of the hearing, due to labor trouble in the lumber industry, and is engaged in the Pacific Coast coastwise trade exclusively, carrying lumber and general merchandise. It has been in business about seven years. On May 29, 1933, it filed its tariff SB-I No. 1, effective June 1, 1933, publishing local class and commodity rates for transportation of property between North and South Atlantic and Gulf ports in the United States, on the one hand, and Pacific Coast ports in the United States, on the other, via the Panama Canal. On November 18, 1933, it filed its tariff SB-I No. 2, effective December 30, 1933, publishing local commodity rates for transportation of property between the same ports via the Panama Canal, which tariff cancelled SB-I No. 1. Since the first tariff was cancelled and is not in effect, it will not be further considered here. Only one voyage was made under SB-I

No. 1. No shipments have moved under SB-I No. 2. Respondent states that its intercoastal operations were discontinued, due to business depression, during and since the year 1934.

Respondent admits that it does not engage in the intercoastal trade, does not advertise or solicit such traffic, and would not accept cargo for intercoastal transportation at the rates published in the tariff under consideration. Those rates are lower than the prevailing rates in effect over other lines and are admittedly not on a compensatory basis. Respondent takes the position that, while it is not now willing to enter intercoastal commerce, it may do so in the future if business conditions improve. In that event it would file a supplemental tariff increasing its rates. It objects to withdrawing its tariff at this time on the ground that, since the Bureau has accepted the tariff, respondent will occupy a better position if it later decides to transport intercoastal cargo. If, however, business conditions do not improve within the next year, respondent would have no objection to then cancelling the tariff.

Intervener developed the fact that respondent's ships average less than 5,000 tons dead weight and testified that regular intercoastal service requires ships exceeding 7,500 tons dead weight. Respondent maintains that it can enter the intercoastal trade with its present equipment supplemented by the purchase of two additional ships.

The record establishes clearly that Hammond Shipping Company, Ltd., is not now engaged in intercoastal commerce. It therefore is not a common or contract carrier by water in intercoastal commerce and is not subject to the provisions of the Intercoastal Shipping Act, 1933. The existence of its schedules holding itself out as a subject carrier when it admits that it is not in the trade, and will not accept cargo if offered, amounts to a false representation, contrary to the letter and spirit of the law. If and when respondent is ready to engage in intercoastal commerce it may publish and file its tariffs under the provisions of the statute. Certainly it gains no advantage or rights under its existing tariff. The situation here considered is similar to that before the Department in *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 450, wherein Calmar Steamship Corporation was found not a common carrier engaged in Gulf intercoastal transportation. The Department there found that Gulf port rates, charges, rules, and regulations filed by Calmar should be cancelled.

The Department finds that respondent is not a common or contract carrier by water in intercoastal commerce. An order will be entered striking its intercoastal tariff SB-I No. 2 from the files of the Department and discontinuing this proceeding without prejudice to the filing of schedules at such future time as respondent may enter intercoastal commerce.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 409

INTERCOASTAL SCHEDULES OF HAMMOND SHIPPING COMPANY, LTD.

ORDER

It appearing, That by order dated May 23, 1936, the Department entered upon a hearing concerning the lawfulness and propriety of the intercoastal schedules enumerated and described in said order remaining on file with the United States Shipping Board Bureau, Department of Commerce;

It further appearing, That a full investigation of the matters and things involved has been made and that said Department 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, and has found that respondent is not a common or contract carrier by water engaged in intercoastal commerce;

It is ordered, That respondent's tariff SB-I No. 2 be, and it is hereby; stricken from the files of the United States Shipping Board Bureau, Department of Commerce, effective on the date hereof, without prejudice to the filing of schedules at such future time as respondent may enter intercoastal commerce.

[SEAL]

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

OCTOBER 22, 1936.

UNITED STATES MARITIME COMMISSION

No. 416

EASTBOUND INTERCOASTAL LUMBER

Submitted October 11, 1936. Decided October 31, 1936

Proposed increased rates on eastbound lumber from Pacific coast ports to Gulf and Atlantic coast ports, found justified. Order of suspension vacated and proceeding discontinued.

M. G. de Quevedo, Joseph J. Geary, O. N. Shepard, C. E. Belsterling, T. F. Lynch, and R. T. Mount for respondents.

William C. McCulloch, W. B. Greeley, K. C. Batchelder, R. B. Seeley, and R. T. Titus for protestants.

REPORT OF THE COMMISSION

BY THE COMMISSION :

By schedules filed to become effective July 1, 1936, respondents, who are all of the regular common carriers transporting lumber by water in intercoastal commerce, proposed to increase the rates on lumber and products thereof from United States Pacific coast ports to United States ports on the Gulf and Atlantic coast from \$12.50 to \$13.00 per 1,000 feet net board measure, minimum 12,000 feet net board measure, and from \$13.00 to \$13.50 on quantities less than the minimum.

Upon protests filed on behalf of West Coast Lumbermen's Association and Intercoastal Lumber Distributors' Association, the operation of the proposed schedules was suspended until November 1, 1936. Unless otherwise noted, rates and prices will be stated in amounts per 1,000 feet board measure. A board-foot of lumber measures 12 inches in length, 12 inches in width, and 1 inch in thickness.

The West Coast Lumbermen's Association consists of 189 companies, who represent approximately 80 percent of the total production of lumber in the so-called Douglas fir region in Oregon and Washington. The membership consists of manufacturers, wholesalers, and independent loggers. The Intercoastal Lumber Distributors' Association is composed of wholesalers, including some manufacturers, who distribute approximately 90 percent of all west coast lumber shipped intercoastally to the Atlantic coast.

The proposed increased rates are alleged to be unreasonable in violation of section 18 of the Shipping Act, 1916, and in contravention of section 16 thereof, in that they would be unduly prejudicial to west coast lumber and unduly preferential of other descriptions of traffic.

Practically all of the traffic affected is lumber from ports of origin in Washington and Oregon. Typical routes are from Seattle, Wash., and Portland, Oreg., through the Panama Canal to New Orleans, La., and Galveston, Tex., on the Gulf, and Norfolk, Va.; Baltimore, Md.; Philadelphia, Pa.; New York, N. Y., and Boston, Mass., on the Atlantic coast.

Although the present rate is published as \$12.50 per 1,000 board feet, the charge actually paid for that quantity may vary from \$12.50 to \$10.00. This is due to the fact that manufactured lumber, although sold on gross measurement, is actually shipped on basis of the net measurement after manufacture. Thus 1,000 board feet of dressed 2 by 4 lumber, which actually measures 1¾ by 3¾ inches, or 16 percent less in volume, represent a net measurement of 840 board feet, on which the charge would be \$10.50.

The Douglas fir region, which lies west of the Cascade Mountains, contains standing timber aggregating 546 billion board feet, or 38 percent of all standing timber in the United States. The principal species are fir, hemlock, spruce, and cedar. The capital investment there in timber, mills, and logging facilities was estimated at approximately \$839,000,000 in 1930. The mills in actual operation or potentially capable of being operated in 1935 numbered 868, with a normal annual productive capacity of 11½ billion board feet. Sixty-five per cent of these mills are located on tidewater and are served by railroad.

The following table prepared from exhibits of record sets forth in concise form the key points in the west coast lumber industry's economic history for the past 10 years:

	Production	Percent of capacity used	Shipments including exports	Average cost of production	Average price	Number of sawmills operating	Estimated number of employees	Average wage per 8-hour day
	<i>M. M. feet</i>		<i>M. M. feet</i>	<i>Per M. feet</i>	<i>Per M. feet</i>			
1926.....	10,411			\$21.10	\$20.73			\$4.70
1927.....	9,988			20.48	19.74			4.74
1928.....	10,182		10,385	19.46	19.28		86,000	4.73
1929.....	10,377	72.0	9,964	20.42	20.63	706		4.81
1930.....	7,638	47.9	7,615	19.90	17.80	540	60,200	4.71
1931.....	5,368	33.6	5,633	16.20	13.55	432	47,300	3.95
1932.....	3,090	19.8	3,516	15.50	11.50	398	30,100	3.17
1933 (first half).....	2,052	30.8	2,250	14.58	12.50	350	33,000	2.90
1933 (second half).....	2,601		2,403	17.48	16.60	425	38,250	4.32
1934.....	4,276	29.6	3,998	20.00	17.23	410	38,250	4.43
1935.....	4,766	35.4	4,891	19.28	17.28	435	38,000	5.00
1936 (first half).....	3,273	48.6	3,221		{ 19.40 18.00 }	468	41,500	5.22

¹ Average price at present time.

For the first half of 1936 the rate of production and shipments approximated 63 percent of the volume in 1929, and the use of saw-mill capacity was 48.6 percent as compared with 72 percent in 1929. Apparently 1929 was the only year in which the average selling price exceeded the average price of production. In the face of this situation, the survival of the industry is attributed to its living through one form or another upon its capital resources.

Employment in the industry is about 50 percent, and the average wage approximately 100 percent, of the 1929 level. The average wage paid by the west coast industry, which accounts for something less than one-half of the cost of production of lumber, is one of the highest of the basic industries. In June 1936 it averaged 67.8 cents per hour, or approximately 31 cents higher than the average wage of all competing lumber-producing regions in the United States, and 18.3 cents higher than the present British Columbia average wage.

The foremost merchandising problem of the industry is finding ways and means of selling its large production of low-grade lumber. This type is found in low-grade logs left after logging operations, estimated to be one-sixth of the total cut of lumber, in center portions of higher-grade logs, and to a great extent in standing timber damaged by forest fires, of which there is approximately 14 billion board feet. The average yield of the logs produced in the Douglas fir region is 21.12 percent of clear or higher quality grade, 19.85 percent of structural and select common grades, 32.16 percent of no. 1 common timber, dimension, and boards, and 26.65 percent of no. 2 and no. 3 common timber, dimension, and boards. The disposal of the middle and lower grades, amounting to 78 percent of the total lumber production, is the chief concern of the west coast industry. This problem is accentuated by the falling off by two-thirds of the industry's export trade from 1,646 million board feet in 1929 to 567 million board feet in 1935, which loss has diverted a large volume of low-grade lumber to the domestic market. The Atlantic coast market normally takes 85 to 90 percent of inch lumber consumed there in no. 2 and no. 3 grades, and absorbs over 60 percent of the production of no. 2 and no. 3 boards by west coast mills. Protestants seek a rate that will enable them to convert low-grade logs and burned-over timber into commercial form and move it to the Atlantic coast markets at prices that will enable it to compete with similar grades produced locally and in nearby Southern States.

Based upon present selling prices f. a. s. dock, the value of the various grades of west coast lumber is as follows: Upper grades, which constitute 14 percent of the production, \$25.50; no. 1 dimen-

sion, boards, and timbers, representing 55 percent, \$15.00; no. 2 common dimension and boards, or 21 percent, \$12.50; and no. 3 common dimension and boards, constituting 10 percent, \$10.00. The weighted average price of these grades is \$15.45.

The net freight rate on these various grades, after deduction is made from the basic \$12.50 rate of the weighted coefficients for each item, averages \$10.58. Thus the delivered price without insurance would be \$26.03, of which the shipper gets 59 percent and the intercoastal carrier 41 percent. It was testified that while prices in the eastern markets fluctuate, the possibility of increased prices of the 86 percent of middle and lower grade lumber is very definitely limited on account of the intense competition that it has to meet. Witnesses for protestants concede that one factor contributing to low prices is overproduction in the Douglas fir region induced by the industry's effort to overcome the economic advantage of its competitors who pay lower wages and have a longer working week. A program of curtailment in production is now being inaugurated by the west coast industry in an attempt to increase prices.

Lumber is a comparatively low-grade bulk cargo moving regularly in tremendous volume. It is stable, not easily damaged, fairly easily handled, and can be loaded on deck to the extent of 20 to 25 percent of the total cargo. The record indicates that a fair average weight for intercoastal lumber per 1,000 board feet is 3,000 pounds or more, some of the recorded tests indicating as much as 3,300 and 3,628 pounds. Lumber stows 80 cubic feet per net ton or 120 cubic feet per 3,000 pounds.

Protestants compute the volume of intercoastal lumber traffic from the west coast in 1929 as 2,295,000 net tons, which at a net rate of \$10.58, produced gross earnings of \$17,986,000. At the present volume of movement, 1936 shipments should produce gross revenue amounting to \$13,500,000 under the rate now in force. The stability of this traffic is revealed by the fact that normally the fluctuation, quarter by quarter, does not vary more than 7 percent.

The total eastbound lumber movement in 1935 to Atlantic coast ports was approximately one-fourth of the combined eastbound and westbound intercoastal tonnage, excluding petroleum and sulphur. In 1931 it was 36 percent. To the Gulf, eastbound lumber was 5.6 percent of the total eastbound and westbound intercoastal tonnage in 1935. From 1925 to 1935 the percentage of lumber traffic from Oregon and Washington to North Atlantic ports to total tonnage from and to the same territories ranged from 60 percent in 1934 to approximately 87 percent in 1928. To the Gulf, comparable percentages range from 24 percent in 1934 to 70 percent in 1930.

The following table, compiled from exhibits of record, discloses the movement of lumber from Oregon and Washington to Atlantic and Gulf ports, together with the average prevailing rates:

Year	To Atlantic coast ports		To Gulf ports ¹	
	Average rate	Footage	Rate	Gross tons
1922	\$15.06	604,606,011		
1923	13.58	771,852,581		
1924	13.00	1,027,040,030	\$14	
1925	14.16	1,375,028,957	14-15	28,133
1926	13.08	1,613,138,155	15-14	73,449
1927	14.00	1,625,107,499	14	44,781
1928	14.29	1,689,074,233	14	31,415
1929	11.50	1,593,518,783	14	39,923
1930	10.00	1,342,070,584	14-12	57,936
1931	9.70	1,236,314,756	12	30,837
1932	9.93	723,474,878	12-12.36	19,215
1933	10.20	848,553,410	12	19,411
1934	12.00	600,945,863	12	25,466
1935 ²	12.12	825,561,062	12-12.50	39,330
1936 (first half)	12.50	574,288,284	12.50	26,785

¹ For fiscal years ending June 30.

² Rate increased from \$12 to \$12.50 on Oct. 3, 1935.

Respondents point out that during the first 4 months in 1936 the movement of lumber from Oregon and Washington to North Atlantic ports exceeded by approximately one-third the volume for the corresponding period in 1935, despite the 50-cent increase in rate during the later period. To the Gulf the increase in volume for the same period was over one-fourth. Gulf respondents also point out that the reduction in 1930 from \$14.00 to \$12.00 was made on the representation that such action would double the volume of shipments, which prediction was not borne out as indicated by the above table.

The intercoastal route is the most important single artery for the distribution of lumber in volume. In 1929, 44 percent moved by rail, 20 percent by intercoastal steamers, 17.5 percent coastwise to California, and 18.5 percent to foreign markets. During the recent depression intercoastal lumber maintained its volume more nearly than the lumber movement to any other market, and in the first half of 1936 it had reached 72 percent of the 1929 volume, whereas rail shipments were only 69 percent of the 1929 level. One of protestants' members, representing 18 mills located on Puget Sound, which supply 16 to 17 percent of all lumber moving intercoastally from Oregon and Washington, testified that for their lumber sold, c. i. f., or approximately one-half of total sales, they employed respondents' facilities for the carriage of 60 percent and chartered ships for the remainder. After reaching the Atlantic coast about 40 percent of intercoastal lumber is consumed in the seaboard markets, while 60 percent moves inland by rail, truck, and canal to points as far west as Detroit and Grand Rapids, Mich., and Cincinnati, Ohio.

Prior to the reduction of the transcontinental rail rate on lumber from the Northwest to eastern points from 90 cents to 72 cents per 100 pounds on August 24, 1935, the lumber traffic therefrom to eastern markets split about 84.5 percent to the intercoastal carriers and 15.5 percent to rail lines, based on the movement for 12 months ending August 1935. Under the influence of the 18-cent reduction in the rail rate, and perhaps the increase of 50 cents in the water rate on October 3, 1935, the percentage of rail traffic increased from 15.5 percent to 26.4 percent up to July 1, 1936, when the transcontinental rail rate was increased to 78 cents per 100 pounds. The percentage carried by intercoastal carriers dropped correspondingly to 73.6 percent in the same period.

The principal market for west coast lumber is in the 15 States from Michigan and Ohio eastward to the Atlantic coast, classed by the railroads as official territory, which is supplied by the so-called "back-haul" movement of intercoastal lumber from the eastern seaboard. The lumber consumption in these States represents approximately 33 percent of the total for the United States. Out of the 4½ billion board feet of domestic lumber consumed there in 1934, 25.5 percent was produced locally, 46.5 percent in the South, 21 percent in Oregon and Washington, and 7 percent in other northern and western States.

These percentages indicate that, disregarding the native woods, west coast lumber meets its strongest domestic competition with southern yellow pine. This is felt principally at New York and points east and south thereof. It was testified that at some points yellow pine enjoyed a price advantage as much as \$5 under west coast lumber.

Another potent rival in these markets is Canadian lumber, principally fir and hemlock from British Columbia and spruce and pine from eastern Canada. The movement from British Columbia to United States Atlantic coast ports from 1923 to 1931 ranged from 139,724,000 board feet to 375,774,000 board feet annually. It slumped to 452,000 board feet in 1934, chiefly as the result of increased tariffs, but rose to 39,670,000 board feet in 1935, due primarily to strike conditions in Oregon and Washington. The Canadian Trade Treaty, which became effective January 1, 1936, reduced the tariff on Canadian lumber from \$4.00 to \$2.00. Thereupon importations of fir and hemlock increased to 84,250,000 board feet in the first 6 months of 1936, 56 million board feet of which went to North Atlantic ports. This represents 63 percent of the treaty quota of 250 million board feet on Canadian fir and hemlock. The maximum imports of Canadian spruce occurred in 1929, aggregating 499 million board feet, and during the first 6 months of 1936 the imports of Canadian spruce and pine amounted to 172 million board feet.

It was testified that from March to July 1936, Canadian lumber dominated the eastern markets with price reductions ranging from 50 cents to \$1.50 under American west coast lumber. The competition eased off temporarily in July due to diversion of Canadian lumber to the United Kingdom, but still persists to a substantial degree on certain low-grade items, such as no. 2 and no. 3 grades, which are not shipped to the United Kingdom. Lumber from British Columbia moves on charter rates ranging from \$8.75 to \$10.00, which, according to the evidence, is sufficient to offset the remaining duty of \$2.00. Apparently Canadian lumber is not a factor in the Gulf markets.

West coast lumber also encounters competition in the eastern markets with Russian lumber, which is accorded the same reduction in tariffs as lumber from Canada under the Canadian Trade Treaty, without any quota restrictions. In 1930 Russian imports amounted to 66 million board feet, consisting chiefly of spruce, and in the second half of 1935, 33 million board feet entered Atlantic ports. This lumber was a real competitive factor in 1930 and 1931, but is not so at present except potentially.

Standards of rate making offered by both respondents and protestants by which to test the reasonableness of the rates proposed consist chiefly of rate testimony showing the percentage advances in lumber rates as compared to increases on other commodities; and comparisons to show how earnings under the proposed rate correspond with the revenue yielded by rates on other intercoastal traffic.

Respondents emphasize the fact that in the general rate advance of October 3, 1935, following the intercoastal investigation of 1935, the rate on lumber was increased by only 4 percent, whereas on other traffic increases amounted to as much as 60 percent. Typical rate advances on eastbound traffic are as follows: 6.78 and 16.12 percent on wheat, 10.75 percent on dried beans, canned goods, and green salted hides, 15.38 percent on vegetable oil, 7.69 percent on sugar, 21.50 percent on wrapping paper, and 15.04 percent on alcohol. Increases in westbound rates amounted to 10.75 percent and 28.55 percent on canned goods, 20 percent on agricultural implements, 6.94 to 9.66 percent on iron and steel articles, 24 percent on soap, and 16.66 to 60 percent on solid fibreboard boxes. The proposed rate of \$13.00 represents an increase of 8.3 percent over the \$12.00 rate in effect prior to the general increase of October 3, 1935.

Rate studies offered by protestants portray the increases from the period June 1, 1933, to July 1, 1936. It appears that on eastbound traffic there were no rate changes on 63 commodities, reductions were made on 3, and increases were made on 198. The average change on all commodities, except lumber, was an increase of 8.1 percent as compared to the increase on lumber of 28.2 percent on basis of the present

rate and 33 $\frac{1}{3}$ percent under the proposed rate of \$13.00. A similar comparison in respect to westbound traffic reflects an average increase of 10.5 percent. A comparable study of rates to and from the Gulf disclosed average increases of 7.9 percent eastbound and 11.5 percent westbound. Protestants lay particular stress upon the relatively small increases on iron and steel articles, moving in considerable volume westbound from the Atlantic coast, ranging from 5 to 10 percent.

Protestants feel that there is no justification for making a further increase in the lumber rate after the general increase of intercoastal rates on October 3, 1935, in view of the fact that since then, out of 1,040 rate items in Agent Thackara's Westbound Tariff, there was one increase in rates westbound from the Atlantic coast up to July 1, 1936, and five reductions. A similar study of the eastbound tariff indicates that out of 441 items an increase was made on 1 item and reductions on 2 commodities. During the same period in the Eastbound Gulf Intercoastal Tariff, out of 271 items there was 1 reduction and no increase except on lumber.

From the foregoing it appears that the proposed rate of \$13.00 represents an increase of 33 $\frac{1}{3}$ percent over the level of June 1, 1933, as compared with advances on other intercoastal traffic of approximately 9.5 percent during the same period; but an increase of only 8.3 percent over the level of October 2, 1935, as compared with the general advance on all commodities on October 3 averaging somewhat higher.

In criticism of the selection of the level of June 1, 1933, as the basis for comparison, respondents call attention to the statement in *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 411; that "The record makes clear that the conference rates on file are the offspring of provisional compromises forced by carrier competition. They do not adjust to any other system of rate making." Supporting their contention that the lumber rate in force on June 1, 1933, was depressed, respondents demonstrate that, considering only the month of October, from 1927 to 1935, and excluding 1931, the rates on other intercoastal traffic were relatively stable, and in October 1935 were generally higher than during the previous years. This is not true of lumber, however, since the rate of \$14.00 prevailing during 1927 and 1928 broke to \$9.00 in 1929, and by gradual increases reached its present figure of \$12.50 in October 1935, still \$1.50 under the previous level of \$14.00.

Earnings under the present and proposed rates on lumber are compared by respondents with the revenue yielded by rates on other commodities moving in the intercoastal trade in the table following:

Commodity	Rates per 100 pounds Oct. 3, 1935	Stowage per net ton	Revenue per cubic foot of stowage
EASTBOUND			
Lumber:	<i>Cents</i>	<i>Cubic feet</i>	<i>Cents</i>
Present rate.....	41.6	80	10.4
Proposed rate.....	43.3	80	10.8
Flour.....	30.0	45	13.3
Wood pulp.....	27.0	50	10.8
Canned goods.....	51.5	55	18.7
Dried beans.....	51.5	55	18.7
Copper ingots.....	15.9	10	31.8
Powdered milk.....	51.5	80	12.8
Mill feed.....	43.0	80	10.7
Hides, G. S. bundles.....	55.0	44	25.0
Linoleum.....	70.0	68	20.5
Alfalfa meal.....	41.0	80	10.2
Seeds, garden..... bags.....	120.0	80	30.0
Oats, in bags (minimum 500 tons).....	27.5	65	8.4
WESTBOUND			
Canned goods.....	51.5	55	18.7
Glass bottles (beer).....	44.0	66	13.3
Iron and steel bars.....	36.0	15	48.0
Iron and steel pipe.....	38.5	36	21.3
Pig iron.....	22.7	9	50.4
Wire, iron, and steel (coils).....	38.5	40	19.2
Lawn mowers, in boxes.....	70.0	71	19.7
Paints in oil..... bbls.....	72.0	24	60.0
Wrapping paper..... rolls.....	55.0	53	20.7
Solid fibreboard boxes.....	51.5	50	20.6
Salt..... bbls.....	38.0	56	13.5
Rope and cordage..... bales.....	60.0	72	16.6
Alcoholic liquors (whisky).....	154.5	80	38.6

¹ Converted to cents per 100 pounds on basis of 3,000 pounds for 1,000 board measure feet.

² Cases.

Gulf respondents convert the \$13.00 rate to \$8.66 per net ton on basis of 3,000 pounds per 1,000 board feet and, using a stowage factor of 120 cubic feet per 1,000 board feet, arrive at a revenue yield of \$4.33 per cubic ton, as against an average revenue yield of \$6.26 per ton of 40 cubic feet on general cargo.

In the composite table appearing below protestants indicate the relative importance of the lumber traffic from Oregon and Washington ports and contrast the earnings thereon with those on other traffic moving in comparatively heavy volume from and to the same points:

Commodity	Gross tons handled ¹		Rate per gross ton		Percent of total tons handled		Ton-mile earnings ²	
	Atlantic	Gulf	Atlantic	Gulf	Atlantic	Gulf	Atlantic	Gulf
Logs and lumber.....	1,023,145	39,330	\$ 39.34	\$ 39.34	60.07	25.78	<i>Mills</i> 1.5	<i>Mills</i> 1.7
Flour, wheat.....	167,974	19,017	6.72	6.72	9.86	12.46	1.1	1.2
Canned goods.....	97,206		11.54		5.71		1.9	
Copper sulphate.....	37,122		11.42		2.18		1.9	
Oats.....	24,580		8.06		1.44		1.3	
Paper stock.....		9,439				6.19		
Canned salmon.....		17,180		11.54		11.26		2.1
Fruits, canned.....		4,507		11.54		2.95		2.1

¹ Fiscal year ending June 30, 1935.

² Based on 5,467 miles to the Gulf and 6,039 miles to Atlantic ports.

³ Based on 3,000 pounds per 1,000 board feet.

The value of lumber is stated to be \$12.82 per ton as compared to values per ton of \$70.00 to \$170.00 on canned goods, \$79.97 on flour, and \$108.64 on copper sulphate.

Ton-mile earnings on typical commodities moving from Atlantic coast ports to Oregon and Washington for the same period are shown to be 1.7 mills on lumber, 1.9 mills on canned goods, and 1.4 mills on iron and steel articles. Similar figures on traffic from the Gulf are from 0.1 to 0.2 mills higher. It should be pointed out that the distances used in these computations are not necessarily the average distances actually steamed by vessels in the intercoastal trade, due to the variation in the number of ports of call. Special emphasis is placed by protestants on the lower earnings on the heavy volume of westbound iron and steel traffic, which is only one-half the volume of eastbound lumber from the west coast. But these earnings would figure higher if consideration is given to the shorter distances to south Pacific coast ports, at which 90 percent of the westbound iron and steel shipments are delivered.

Reference is also made by protestants to lower rates on lumber to foreign destinations and to charter rates from British Columbia to North Atlantic ports. Obviously such rates do not afford proper comparisons with those here in issue in the absence of a showing of similarity of transportation conditions and the circumstances under which they were made.

Protestants regard certain allowances and divisions granted by some of the respondents out of their present rate as an admission that such rate is not too low. For instance, Calmar, in its Tariff SB-I No. 7, under the so-called Berth Quantity Allowance Rule, provides for reductions from the basic rate on two berthings ranging from 50 cents to \$3.52 for footage shipped, ranging from 1,100,000 board feet to 5,300,001 board feet and over. If this is a legitimate inference to be drawn against Calmar it should not be used to the disadvantage of other respondents who have not seen fit to establish such a rule. Furthermore, the issue as to the lawfulness of this rule is before the Commission in another proceeding.

Certain of respondents have agreements with on-carriers to transship cargo at Seattle to Atlantic coast ports which originates at and is shipped on through bills of lading from points in British Columbia. As illustrative, one provides that the through rate shall be the rate from Seattle, divided as follows: 12.5 cents per 100 pounds to the on-carrier, the remainder to respondent carrier. However, it is logical to suppose that this agreement was limited to general cargo, excluding lumber, in view of the testimony that no lumber has moved under it, and that the on-carrier's division of the through rate is

measured in rates per 100 pounds, whereas the lumber rate is on a footage basis.

In justification of their claim for the need of additional revenue respondents call attention to the deficits of intercoastal carriers amounting to \$770,988 in 1930, \$4,550,821 in 1931, \$4,075,971 in 1932, \$95,959 in 1933, and \$4,510,200 in 1934. They also point to the statement in *Intercoastal Investigation, 1935, supra*, at page 462, that "respondents appear in need of additional revenue to enable them to keep their fleets in good repair and maintain modern and efficient service." Respondents contend that operating costs have increased disproportionately with rate increases, and by way of proof compare vessel operating expenses for the first 6 months of 1936 with those for the year 1933. The following table indicates the percentage increases in these cost items:

	Wages	Ships stores	Stevedoring		Clerking	Total increase
			Loading	Discharging		
	Percent	Percent	Percent	Percent	Percent	Percent
Williams.....	32.00	30	¹ 61.00	¹ 65.00	-----	26.00
American-Hawaiian ²	25.00	37	61.00	62.50	60.00	28.50
Isthmian.....	18.00	25	24.00	24.00	{ ³ 77.00 ⁴ 9.00 }	26.27
Luckenbach.....	60.84	-----	{ ³ 59.52 ⁴ 68.88 }	{ ³ 59.52 ⁴ 68.88 }	31.03	-----
Luckenbach Gulf.....	70.22	-----	{ ³ 66.79 ⁴ 94.84 }	{ ³ 66.79 ⁴ 94.84 }	37.95	-----

¹ Includes clerking.

² First 5 months 1936 over year 1933.

³ East-bound.

⁴ West-bound.

In contrast to this showing of increased operating costs, protestants adduced testimony indicating a decided improvement in respondents' gross operating revenues since 1933. Briefly, it is demonstrated that the percentage of increase of the westbound intercoastal movement in the fiscal year 1936 over the calendar year 1933 was 37.5 percent. This percentage of increase, applied to the gross operating westbound revenues of 17 intercoastal lines for 1933 of \$19,093,482, indicates gross operating westbound revenue for 1936 amounting to \$7,160,056 in excess of 1933 revenue, which does not include any increased revenue that may have resulted in that period from increases in rates. This figure, plus the increase in gross operating revenues during the same period for eastbound intercoastal lumber of \$4,167,473, equals \$11,327,529, which does not take into account any increased revenues derived from increased volume of eastbound traffic other than lumber.

Additional evidence of the recovery of intercoastal lines is seen by protestants in the net earnings of American-Hawaiian amounting to \$494,843 for the first 6 months of 1936, the new shipbuilding program

of Calmar, and the fact that the loans of the former United States Shipping Board Bureau to respondents are reported as current, having been reduced from \$7,627,614 to \$1,608,661.

There is abundant testimony in behalf of protestants to the effect that the industry cannot stand a further rate increase of 50 cents. One shipper declared that in view of the chaotic condition of the market, with prices below cost of production, his agency would not be able to pass on the increase to the buyer, which would result in an increase in the losses now being sustained. But he conceded that if the demand at the present time for west coast woods was greater, the 50 cents could be absorbed. Another shipper stated that for several months past the market has not paid the current going f. a. s. price plus the \$12.50 freight rate plus insurance, by anywhere from 50 cents to \$1.00. He estimated that the proposed rate increase would reduce the volume of west coast lumber shipments to the North Atlantic coast by 2 percent or possibly more. Another shipper stated that "probably this fifty cents won't kill us. It is the cumulative effect of fifty cents after fifty cents that will be asked for continuously, from the time our rate was, in the old days, \$10, that does hurt. * * * That is our real fear." The consensus of opinion among shippers was that an increase would divert business to Canadian and yellow pine lumber producers, and cause the shifting of a substantial proportion of the movement of dry stock, dimension, and uppers to rail transportation; also that \$12.00 would be a fair rate and \$12.50 the maximum that the traffic could bear.

Protestants also expressed the definite view that establishment of the proposed rate would restrict the territory in which intercoastal lumber could be distributed inland from the Atlantic seaboard. They show that in many instances the combination of the \$13.00 rate, plus transfer charges, plus the normal back-haul rail rate would exceed the all-rail transcontinental rate of 78 cents per 100 pounds. This would be true as to Buffalo and Syracuse, N. Y., Pittsburgh and Altoona, Pa., and Huntington, W. Va. To Roanoke, Va., there would be a slight difference in favor of the rail-and-water route. Also, to Syracuse the aggregate rail-and-water rate through the port of Albany would be lower than the all-rail rate. However, ice conditions in the Hudson River interfere with shipments through Albany from 3 to 4 months in the year. Assuming that 21.5 cents per 100 pounds is the maximum rail back-haul rate that could be combined with a \$13.00 intercoastal rate, a witness for protestants stated that the effect of the proposed rate would be the elimination of markets in a strip of territory roughly 100 miles east of Buffalo and Pittsburgh.

Respondents are entitled under the law to a maximum reasonable rate, or one that is not so high as to be excessive or extortionate, and not so low as to yield less than the cost of service plus a fair profit. In determining whether the proposed rates come within these bounds, the most important considerations are: The probable effect of the rate upon the flow of the traffic, the element of risk involved, the regularity and volume of movement, the value of the commodity, the relation of the rate in question to rates for comparable services, the value of the service to the shipper, and the cost to the carrier of rendering the service.

The record makes clear that lumber is entitled to whatever advantages flow from the fact that it is a relatively low-grade commodity, moves regularly in huge volume, and is not unduly susceptible to loss or damage in transit.

Whether the establishment of the proposed rates would curtail the volume of movement cannot be determined. But the fair import of the testimony of witnesses qualified to speak on the subject is that the rate would not seriously affect the flow of the traffic. Protestants insist that the rate should not only permit the movement of the present volume undiminished but also promote the marketing of a distinct type of low-grade lumber recoverable from inferior timber that is now largely wasted. While the ideal function of a reasonable rate is to facilitate the widest distribution of a commodity, the question of extending promotional rates for that purpose rests primarily within the managerial discretion of the carriers. They are entitled to demand, and the Commission has no alternative but to prescribe or approve, a maximum reasonable rate.

The value of the service to the shipper, in a general sense, is the ability to reach a market at a profit. Where, as in this industry, *f. a. s.* prices are less than the cost of production, it is obvious that the failure to market at a profit cannot be attributed to the cost of transportation. The present rate has permitted a steadily increasing volume of lumber to reach the eastern markets at prices which the industry evidently considers profitable in the sense that they make it possible to liquidate capital investments, which is said to be preferable to shutting down operations entirely.

It is only in measuring value of service that consideration may be given to the competition that protestants meet in the eastern markets with lumber from Canada, Russia, the South, and elsewhere, because the Commission has no authority to reduce a rate primarily to protect an industry from foreign or domestic competition. *Atchison, T. & S. F. Ry. Co. v. Interstate Commerce Commission*, 190 Fed. 591. This decision is a reflection of the basic rule expressed by the Supreme Court of the United States in *Interstate Commerce Commis-*

sion v. Diffenbaugh, 222 U. S. 42, 46, that "The law does not attempt to equalize fortune, opportunities or abilities" of competitors.

It is true that the active market competition from other lumber-producing regions has a limiting effect upon the value of the service to protestants. Furthermore, the availability of relatively cheap rail transportation and water transportation at lower charter rates tends to lessen the worth of respondents' services. Just what weight should be given to these factors is difficult to determine. However, it is significant that Canadian competition is easing off, and in the face of all competition, the movement of west coast lumber intercoastally has steadily and progressively risen in volume since 1934, in spite of the increase of 50 cents in the rate in October 1935. Roughly, the movement of lumber to Atlantic coast ports was 360 million board feet for the first half of 1935, 465 million in the second half of that year, and 574 million during the first half of 1936. It is interesting to note here that one producer was able to sell over 6 million board feet of lumber since January 1, 1935, in markets reached via the Mississippi River, principally St. Louis, Mo., and Chicago, Ill., at through ocean-and-barge rates of \$16.83 and \$19.33, respectively. The price of lumber has followed a gradual upward trend since 1932. This evidence of improving conditions is corroborated by testimony of record showing that the per capita consumption of lumber has increased from 94 board feet in 1932 to 135 board feet in 1935, and that all kinds of building in 37 Eastern States has increased from 20 percent of 1926 volume in 1933 to 40 percent of 1926 volume in the first half of 1936. The national outlook, according to the record, indicates the prospect of a large and active building period, due in a large measure to an acute shortage of homes and buildings, particularly of the low-cost type, which makes up the major market for lumber. There is no reason to doubt that west coast lumber, due to its superiority over certain other types of competing lumber, and the fact that it has aggressively competed with other woods in the past, will obtain its fair share of any new business in the future.

No very satisfactory conclusion can be drawn from the evidence bearing upon cost of service. An investigation of the deficits referred to by respondents for the years 1930 to 1934 in the intercoastal trade reveals that they are based in part upon coastwise and foreign operations of some of the respondents. Moreover, the revenue figures include passenger and mail revenue, and income from nonoperating activities, while the expense figures embrace these items as well as capital losses. Some of the passenger lines which are mainly responsible for the deficits do not carry any lumber at all from Oregon and Washington. The increases in respondents' operating expenses for

the first half of 1936 over 1933 would be more persuasive of increased costs of operation generally if, in addition, there had been shown for each year the volume of revenue tonnage and the operating expenses and revenues, so that the unit cost per payable ton could be determined. It may also be said, in connection with protestants' showing of increased gross operating revenue of respondents over the year 1933, that such statistics do not mean much unless accompanied with a statement of the corresponding operating expenses, and the return on the recorded property investment that is thereby produced.

In the absence of a satisfactory showing as to the cost of service, the most tangible evidence by which to gage the reasonableness of the rates in issue consists of the comparative rate analyses of record. As stated, protestants demonstrate that the proposed rate of \$13.00 is 33 $\frac{1}{3}$ percent higher than the lumber rate in effect June 1, 1933, as compared with an increase in commodity rates generally of approximately 9.5 percent during the corresponding period. But we are not particularly impressed by this comparison in view of the fact that the lumber rate established on that date clearly shows the influence of the intense carrier competition indicated by the rate history of the preceding 4-year period, whereas the rate level of June 1, 1933, on commodities generally does not appear to be affected to the same marked degree. We are convinced that the rate level existing just prior to the advance of October 3, 1935, was more responsive to the present-day trends and conditions in the inter-coastal trade than that of June 1, 1933, and that an increase of only 8.3 percent over that basis is not out of line with the general rate advance of October 3, 1935.

The comparative earnings of the rates in issue form an instructive guide in determining their reasonableness. The ton-mile test employed by protestants is subject to the objection that it excludes from consideration the stowage factors of the various commodities and unduly emphasizes the matter of distance, which does not figure prominently as a factor in rates for water transportation. For instance, protestants show that westbound rates on iron and steel articles yield ton-mile earnings of 1.4 mills, as compared with ton-mile revenue of 1.5 mills on lumber. However, when the earnings are computed upon the basis of space occupied in the ship, a comparison of the same rates reveals that the rates on iron and steel articles yield from 21.3 cents to 50.4 cents per cubic foot of stowage, whereas the proposed rate on lumber produces only 10.8 cents. The revenue of 10.8 cents on lumber is based upon the \$13.00 rate converted to a rate of 43.3 cents per 100 pounds, using 3,000 pounds as the equivalent of 1,000 board feet. Using 3,300 pounds, the rate and earnings would be 39 cents and 9.8 cents, respectively. As shown in one

of the preceding tables, the rate of \$13.00, on the basis of relative earnings, compares favorably with the going rates on other intercoastal traffic moving regularly in volume.

We revert to the economic distress of the lumber industry, which has been discussed at considerable length in this report, because the subject was mainly dwelt upon by protestants, who seemed to assume that it ought to be controlling in the disposition of the case. Our only duty with respect to the rates in issue is to inquire whether they are in accordance with the provisions of the Shipping Act, 1916, and related acts. We cannot require of carriers the establishment of rates which assure to a shipper the profitable conduct of his business. The carrier may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it; nor, conversely, can the shipper demand that an unreasonably low charge shall be accorded him simply because the profits of his business have shrunk to a point where they are no longer sufficient.

The effect of a rate upon commercial conditions, whether an industry can exist under particular rates, are matters of consequence, and facts tending to show these circumstances and conditions are always pertinent. But they are only a single factor in determining the fundamental question. A narrowing market, increased cost of production, overproduction, and many other considerations may render an industry unprofitable, without showing the freight rate to be unreasonable.

Upon consideration of all the evidence as a whole, in the light of argument of counsel adduced therefrom, and the principles that must govern our decision, we conclude that the rates under suspension have not been shown to be unlawful.

We find that the suspended schedules are not 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 31st day of October, A. D. 1936.

No. 416

EASTBOUND INTERCOASTAL LUMBER

It appearing, That by order dated June 27, 1936, the Department of Commerce of the United States 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 November 1, 1936;

It further appearing, That on October 26, 1936, the United States Maritime Commission, pursuant to the authority vested in it by the Merchant Marine Act, 1936, took over the powers and functions theretofore exercised by the said Department as the successor to the powers and functions of the United States Shipping Board, by virtue of the President's Executive order of June 10, 1933, which were transferred to the said Commission by section 204 (a) of the said Merchant Marine Act, 1936;

It further appearing, That a full investigation of the matters and things involved has been made and that said 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, 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 as of October 31, 1936, and that this proceeding be discontinued.

By the Commission.

(SEAL)

H. A. WILEY, *Chairman.*

M. M. TAYLOR.

GEO. LANDICK, JR.

Attest:

TELFAIR KNIGHT, *Secretary.*

UNITED STATES MARITIME COMMISSION

No. 407

C. W. SPENCE, DOING BUSINESS AS PACIFIC LUMBER & SHIPPING
COMPANY

v.

PACIFIC-ATLANTIC STEAMSHIP COMPANY

Submitted October 26, 1936. Decided December 1, 1936

Rate charged on piling from Everett and Tacoma, Wash., to Wilmington, Del., found not unreasonable or otherwise unlawful. Complaint dismissed.

Tyre H. Hollander for complainant.

W. T. Sexton for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report. Our conclusions do not differ from those contained in the proposed report.

By complaint filed April 15, 1936, as amended, complainant C. W. Spence, an individual trading and doing business as Pacific Lumber and Shipping Company, alleges that the rate charged by defendant, a common carrier by water in intercoastal commerce, on two shipments of piling moving from Everett and Tacoma, Wash., to Wilmington, Del., October 26 and November 21, 1935, was in violation of section 14 of the Shipping Act, 1916, in that defendant failed to provide cargo space prior to October 3, 1935, as agreed; was in violation of section 18 in that the governing tariff was not filed with the United States Shipping Board Bureau, Department of Commerce, and public notice given within the statutory period, and was unjust, unreasonable, and unduly prejudicial in violation of sections 18 and 16 of that act. Reparation is sought. Rates will be stated in amounts per 1,000 net board measure feet.

During August 1935 complainant entered into negotiations with defendant for September shipment of about 225 pieces of piling ranging from 102 to 110 feet in length from Everett and Tacoma

to Wilmington at the rate of \$12 plus 10 per cent then in effect and published in Agent Thackara's Tariff SB-I No. 5. By letter dated September 6, 1935, complainant tendered the piling for shipment, and understood that such letter, together with prior correspondence and oral agreements, constituted a firm booking. The record does not establish that defendant made firm reservation for September movement. Both parties understood that effective October 3, 1935, the rate would be increased, but defendant misquoted the increased rate as being \$12.50 plus 10 per cent, whereas it was \$12.50 plus 25 per cent, published in Agent Thackara's Tariff SB-I No. 7, filed with the United States Shipping Board Bureau, Department of Commerce, August 31, 1935. Complainant testifies that he had actual knowledge of the latter rate about September 27, 1935.

Although from time to time during the negotiations defendant agreed to furnish cargo space at the \$12 plus 10 per cent rate during September, it testified that it was unable to place ships in Puget Sound during that month due to strike conditions in the shipping industry. No other ships were available to complainant for the same reason. Several of defendant's ships intended for Puget Sound were turned back off California due to labor troubles. In a letter dated August 2, 1935, defendant advised complainant to bear in mind that the rate would be increased and stated "it is, of course, always understood that our agreement to lift is subject to Force Majeure, strikes, etc." There was no agreement to observe the \$12 rate plus 10 per cent after the increased rate became effective.

On October 26 and November 21, 1935, defendant called at Tacoma and Everett and lifted the cargo consisting of 298,482 board feet at the tariff rate of \$12.50 plus 25 per cent, total freight charges amounting to \$4,663.79, which were paid by consignee and deducted from complainant's invoice. While complainant maintains that the legal rate was \$12 plus 10 per cent, it seeks reparation in the amount of \$559.65 based on a rate of \$12.50 plus 10 per cent which was erroneously quoted by defendant as being applicable on and after October 3, 1935. The misquotation of a rate by the agent of a carrier does not warrant the exaction of a rate other than that applicable, *Texas & Pacific Ry. v. Mugg*, 202 U. S. 242. It also, of itself, affords no basis for a finding that the rate is unreasonable or for an award of reparation by the Commission.

Complainant urges that the rate which became effective October 3, 1935, did not apply on the shipments and that no rate other than that effective at the time the contract of affreightment was entered into was legally applicable. In support of that contention *Ambler v. Bloedel Donovan Lumber Mills*, 68 Fed. (2nd) 268, is cited in his brief. That case involved a contract between shipper and carrier for

transportation of lumber from Puget Sound to Atlantic ports during 1931 at a rate of \$8, whereas the carrier was a party to an agreement with other carriers to observe a \$10 rate. Although the shipments moved during the period the \$10 rate agreement was in force, the shipper's contract with carrier was made before that time. The court found that the contract was not unlawful and that the agreed rate did not apply. That case is distinguishable from the instant case in that the traffic there considered moved prior to the enactment of the Intercoastal Shipping Act, 1933, which governs here in so far as determining the applicable rate is concerned. In 1931 carriers were prohibited by section 18 of the Shipping Act, 1916, from charging rates higher than those published and properly filed, but there was no specific prohibition against their making contracts with shippers at lower rates. In the cited case the court recognized such contracts as not unusual and stated that the practice was then well known. Complainant mentions other court cases in harmony with the *Ambler case*. None of them deals with transportation governed by the Intercoastal Shipping Act, 1933. In *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 455, it was found that under the provisions of that act, the rate in the effective tariff affords the only legal basis upon which freight charges may be collected, any agreement to the contrary notwithstanding. We find that the applicable rate was \$12.50 plus 25 per cent as charged.

There remains for determination the question whether the rate charged was otherwise unlawful as alleged. Complainant's contention that Agent Thackara's Tariff SB-I No. 7 was not filed with sufficient public notice is based on his understanding that no printed copies of the tariff were available for posting on the Pacific coast until about a week prior to the effective date of the rates published therein. Section 2 of the Intercoastal Shipping Act, 1933, provides that unless shorter notice is authorized, new schedules shall become effective not earlier than thirty days after date of posting and filing thereof with the United States Shipping Board, now the United States Maritime Commission. The tariff involved here was filed August 31, 1935, within this requirement of the statute. The fact that it was not posted at origin ports does not invalidate the rates published therein. *United States v. Miller*, 223 U. S. 599.

At the hearing complainant admitted that defendant failed to furnish cargo space prior to October 3 because the space was not available. He also stated that he had no knowledge of unjust discrimination as between him and other shippers in the adjustment and settlement of claims, and that there was apparently no undue preference of competing shippers since they were all treated alike by defendant. This amounts to abandonment of the allegations under

sections 14 and 16. No evidence under section 18 was offered in support of the allegation of unreasonableness of the rate charged.

Defendant denies that the rate charged was unreasonable or otherwise unlawful, but is willing to pay the reparation sought on the theory that complainant was forced to pay the higher rate through no fault of his own. The Commission has no authority under the law to award reparation except upon a showing of violation of the shipping acts. Apparently, if there is liability under the contract of affreightment for failure of defendant to furnish cargo space within the time agreed upon, any recourse of complainant is before a court of competent jurisdiction.

An order dismissing the complaint and discontinuing this proceeding will be entered.

1 U. S. M. C.

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. 1936

No. 407

C. W. SPENCE, DOING BUSINESS AS PACIFIC LUMBER & SHIPPING COMPANY

v.

PACIFIC-ATLANTIC STEAMSHIP COMPANY

This case being at issue upon complaint and answer filed 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 said Department as the successor to the powers and functions of the United States Shipping Board; and the Commission having, on the date hereof, 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.) TELFAIR KNIGHT,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 201

THE PARAFFINE COMPANIES, INC.,

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, ET AL.

Submitted September 28, 1936. Decided December 28, 1936

Defendants' failure to provide split delivery service on eastbound intercoastal shipments of feltbase rugs, feltbase carpeting, linoleum, and accessory commodities not shown to be unduly preferential or prejudicial, or unjust and unreasonable. Complaint dismissed.

A. W. Brown and R. A. McWhinney for complainant.

Joseph J. Geary for all defendants except Isthmian Steamship Company and Nelson Steamship Company.

Thomas F. Lynch for Isthmian Steamship Company.

James A. Russell for Nelson Steamship Company.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by complainant and defendants replied. The findings recommended by the examiner are adopted herein.

Complainant alleges that the refusal of defendants to provide split delivery service at Atlantic coast ports for straight and/or mixed carloads of feltbase rugs, feltbase carpeting, linoleum, and accessory commodities, while providing such service in connection with the same commodities at Pacific coast ports, is a violation of sections 16 and 18 of the Shipping Act, 1916, and asks that defendants be required to provide the same service on eastbound shipments as now applies on westbound shipments.

The above commodities are manufactured by complainant at Emeryville, Calif., on the east side of San Francisco Bay. Complainant's witness testified that his company is the only one on the west coast which manufactures these commodities. While he stated that his company has lost business to competitors he was unable to give a single instance where such loss was due to the non-existence of the split delivery privilege. It was admitted that there was

no competition between shipments made by his company eastbound with those shipped westbound by manufacturers on the east coast, and there is no positive evidence that the east coast manufacturers availed themselves of the privilege and profited thereby on their westbound shipments. Ordinarily, under section 16 of the Shipping Act, 1916, there must be a competitive relation between persons, localities, or traffic before undue preference can arise, and the undue prejudice must be of such kind as will result in positive advantage to the one unduly preferred. Moreover, it is essential to show the specific effect of the alleged prejudicial rate or practice upon the flow of the traffic and the marketing of the commodity.

It is contended that the refusal to accord the privilege eastbound is an unjust and unreasonable practice in violation of section 18 of the Shipping Act, 1916. Defendants' rates in both directions on feltbase rugs, feltbase carpeting, linoleum, and accessory commodities are 70 cents per 100 pounds, carload, minimum 30,000 pounds, and \$1.50 per 100 pounds less than carload. Because of the inability to obtain the service, complainant consigns most of its carload shipments to Brooklyn, N. Y., where they are kept in storage pending distribution to dealers along the Atlantic coast and at inland points east of Chicago, Ill. Only a few carload shipments are forwarded out of Brooklyn. There is very little distribution at the South Atlantic ports on account of the expense in shipping less than carloads from the concentration point in Brooklyn. In order to compete in the East, complainant must absorb all freight charges from the Pacific coast to ultimate destination, and the handling and storage charges at Brooklyn. While complainant may encounter economic and geographical disadvantages in selling its products in the East, the law does not contemplate the equalization of natural advantages and disadvantages through an adjustment of freight rates.

When complainant began the manufacture of linoleum in 1931 it expected to supply the major portion of the demand for that commodity on the Pacific coast, but eastern competitors have reduced their prices on linoleum in the Pacific coast markets to such an extent that complainant has not been able to obtain that business, and is now forced to find an outlet in eastern markets in order to keep its plant in operation. Complainant feels that if split delivery "is available and is given to our competitors on the west coast, that we should be given the same privilege on the east coast." Complainant assumed, but made no showing, that operating conditions in the eastbound and the westbound intercoastal trades were similar, and defendants declined to explain why the service is available in one direction and not in the other.

Upon this record we find that complainant's allegations have not been sustained. 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 28th day of December A. D. 1936

No. 201

THE PARAFFINE COMPANIES, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

This case being at issue upon complaint and answers 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 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.) TELFAIR KNIGHT,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 386

H. KRAMER & COMPANY

v.

INLAND WATERWAYS CORPORATION ET AL.

Submitted December 16, 1936. Decided January 13, 1937

Charges on shipments of brass ingots, in carloads, during the period August 12 to October 17, 1935, found applicable, but unjust and unreasonable. Reparation awarded.

H. J. Niemann, W. G. Oliphant, and E. Holzborn for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by defendants to a finding recommended by the examiner in his proposed report regarding the failure of the carriers to file their agreement under section 15 of the Shipping Act, 1916, covering joint through intercoastal transportation. A determination of the issues presented by complainant does not require a decision on the question which these exceptions raise and, therefore, that matter will not be considered at this time. As to issues directly involved, the findings recommended by the examiner are adopted herein.

By complaint filed March 13, 1936, complainant, H. Kramer & Company, engaged in the business of smelting and refining of non-ferrous metals and in selling brass, bronze, and aluminum ingots and other alloys, with principal offices at Chicago, Ill., alleges that transportation charges assessed and collected by defendants, Inland Waterways Corporation and Swayne & Hoyt, Ltd. (Gulf Pacific Line), common carriers by water in intercoastal commerce, on four carload shipments of brass ingots, weighing 75,198, 41,196, 50,080, and 50,028 pounds, respectively, which moved September 3, 13, 17, and October 11, 1935, from Chicago, Ill., to Los Angeles Harbor, Calif., were inapplicable; unduly and unreasonably preferential, prejudicial, and disadvantageous in violation of section 16 of the

Shipping Act, 1916; unjustly discriminatory and prejudicial under section 17; and unjust and unreasonable in violation of section 18 thereof. Reparation is sought in the amount of \$49.13. Charges involved are stated in cents per 100 pounds.

Complainant was charged a joint through rate of 75 cents under Item 4250-A of defendants' tariff SB-I No. 4, applicable on brass ingots in carloads, minimum weight 30,000 pounds, which became effective December 27, 1934. In addition, there was assessed and collected a 5-cent emergency charge under Item 85. Paid freight bills attached to the complaint disclose that 32 cents or 40 percent of the combined rate and charge accrued to the Inland Waterways Corporation, and 48 cents or 60 percent of the Gulf Pacific Line.

Complainant contends that its shipments were interstate shipments within the meaning of Item 40 (a) of the Tariff of Emergency Charges filed with the Interstate Commerce Commission, identified as Agent L. E. Kipp's I. C. C. No. A-2611, and that an emergency charge of 2.5 cents provided under Part 4, Group 521, of that tariff was applicable and should have been applied to its shipments.

Item 40 (a) above mentioned provides that—

Where a shipment moves via an all-water * * * route the line-haul emergency charge will be, if a carload shipment, 10 percent of the line-haul transportation charges * * * but not more in any case than the line-haul emergency charge which would be applicable if the shipment moved all-rail from and to the same points.

That provision has application only to shipments moving via the routes of carriers subject to the jurisdiction of the Interstate Commerce Commission with which the tariff was filed. It is not applicable to the shipments here in issue. Since such a provision does not appear in the tariff of defendants on file with this Commission, the charge of 5 cents assessed and collected under Item 85, Supplement 36, to defendants' joint tariff SB-I No. 4 was legally applicable.

Section 17 of the Shipping Act, 1916, applies only to common carriers by water in foreign commerce. Consequently, the allegation of a violation of that section will not be considered.

Complainant did not appear at the hearing. Defendants introduced evidence and admitted the statements of fact set forth in the complaint and all of complainant's charges except that of unreasonableness.

The Tariff of Emergency Charges above mentioned originated with a decision of the Interstate Commerce Commission in Ex Parte 115, *Emergency Freight Charges, 1935*, 208 I. C. C. 4, which permitted temporary increases in rates and as a tariff publishing expedient authorized publication of such increases in the form of emergency charges which were to be added to the current rates. A maximum level for emergency charges was prescribed. The Tariff

of Emergency Charges filed pursuant to that authorization became effective April 18, 1935. It named a 5-cent charge on shipments of brass ingots in carloads, applicable not only on all-rail traffic but also on all-water and rail-barge routes subject to the Interstate Commerce and related acts. The 5-cent charge was reduced to 2.5 cents, effective August 12, 1935.

Defendants operate on a through route in connection with other carriers, the traffic of which was and still is subject to the Tariff of Emergency Charges above mentioned. Upon the establishment of such charges defendant Inland Waterways Corporation applied for and received from the United States Shipping Board Bureau, Department of Commerce, special permission authority to file on five days' notice increased rates in the form of emergency charges in the same amounts as those charged by other carriers. Pursuant to that authorization it established a 5-cent charge on the commodity involved, effective May 28, 1935. On October 17, 1935, the charge was reduced to 2.5 cents.

By the publication of the 5-cent emergency charge the 75-cent joint through rate was increased to 80 cents. As shown above that total charge later was reduced to 77.5 cents. Complainant alleged the charge assessed and collected was excessive and unreasonable to the extent of 2.5 cents. In substance, this is an allegation that the total transportation charge of 80 cents was unreasonable to the extent it exceeded 77.5 cents. The 5-cent increase was made five months after the initial voluntary establishment of the 75-cent rate. The higher charge remained in effect approximately four and one-half months. The 77.5-cent charge is still in effect. When rates or charges are increased for a short period and then voluntarily reduced, there is established a prima facie presumption that the increased rate or charge was unreasonable to the extent it exceeded the subsequently established rate. Defendants made no attempt to rebut the presumption thus raised. The defendant barge line testified it concurred in the Tariff of Emergency Charges filed with the Interstate Commerce Commission in so far as its rail-barge rates were concerned, and that it endeavored to keep emergency charges on its intercoastal transportation on the same level as that applicable to transportation by rail carriers. Defendant Gulf Pacific Line concurred in that testimony. With the exception of the period August 12 to October 17 defendants' published charge on brass ingots did not exceed that level. Their action in establishing the 5-cent charge in the first instance and in subsequently reducing it to 2.5 cents followed similar action which had previously been taken by other carriers and indicated that they regarded the level of such other carriers as a maximum level.

Defendants also testified the tariff filed with the Interstate Commerce Commission, in which the 2.5-cent charge observed by other carriers was published, was not received by them until June 29, and that the publication of a similar reduction in their behalf, effective August 12, would have required very expeditious handling and would have been possible only by special permission of the Department of Commerce. The tariff in which the reduction was finally made was not issued until September 12, 1935; it became effective October 17, 1935. No application was submitted for the special permission claimed to have been necessary. Defendants by previous experience in such matters are familiar with special permission procedure, and the implication that there was not sufficient time is unjustified. The only reason cited for the delay was "press of other matters." Whatever the cause of the delay, it does not relieve defendants from their obligation under section 18 of the Shipping Act, 1916, to establish, observe, and enforce just and reasonable charges.

Defendants admitted complainant's allegation of undue and unreasonable preference, prejudice, and disadvantage. Such an allegation, however, is not proven by the mere admission of a carrier. It is well settled that the existence of unlawful preference and prejudice is a question of fact to be clearly demonstrated by substantial proof. As a general rule there must be a definite showing that the preference and prejudice complained of is undue and unreasonable in that it actually operates to the real disadvantage of the complainant. To do this it is of primary importance that there be disclosed an existing and effective competitive relation between the prejudiced and preferred shipper. *Port of Philadelphia Ocean Traffic Bureau v. The Export Steamship Corporation et al.*, 1 U. S. S. B. B. 538, 541. The record is silent as to any shipments other than those of complainant. Proof of a violation of section 16 of the Shipping Act, 1916, supported by proof of damage resulting directly therefrom is a prerequisite to an award of reparation. The record contains no such proof.

The Commission finds that the rate assailed on the shipments under consideration was legally applicable, but that it was unjust and unreasonable to the extent it exceeded 77.5 cents. It further finds that complainant made the shipments above described; that it paid total charges thereon aggregating \$1,572.02 at the rate legally applicable and was damaged thereby in the amount of the difference between the amount paid and \$1,522.89, the amount payable on the basis herein found lawful, and is entitled to reparation in the amount of \$49.13. 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 18th day of January A. D. 1937

No. 386

H. KRAMER & COMPANY

v.

INLAND WATERWAYS CORPORATION ET AL.

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 and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the defendants, Inland Waterways Corporation and Swayne & Hoyt, Ltd. (Gulf Pacific Line) be, and they are hereby, authorized and directed to pay unto complainant, H. Kramer & Company, of Chicago, Ill., on or before thirty days from the date hereof, the sum of \$49.13 as reparation on account of unjust and unreasonable transportation charges assessed and collected on four carload shipments of brass ingots from Chicago, Ill., to Los Angeles Harbor, Calif., on September 3, 13, 17, and October 11, 1935, respectively.

By the Commission.

[SEAL]

(Sgd.) TELFAIR KNIGHT,

Secretary.

UNITED STATES MARITIME COMMISSION

No. 423

PHELPS BROS. & Co., INC.

v.

COSULICH-SOCIETA TRIESTINA DI NAVIGAZIONE ET AL.

Submitted March 12, 1937. Decided March 29, 1937

Allegation that defendants have established and are maintaining a system of exclusive patronage contracts under agreements or understandings not filed or approved pursuant to section 15 of the Shipping Act, 1916, not sustained, and defendants' conference agreement and contracts with shippers entered into pursuant thereto not shown to result in undue or unreasonable preference or advantage to shippers who patronize defendants' lines exclusively or to operate to the detriment of the commerce of the United States.

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 conference, consideration will be given to the question of issuing an order disapproving the conference agreement.

John Tilney Carpenter for complainant.

Roscoe H. Hupper and *Burton H. White* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. His findings are adopted herein.

Complainant is a New York corporation engaged in the transportation of property in foreign commerce of the United States. Defendants¹ are the sole members of the Adriatic, Black Sea, and Levant Conference.

¹ Cosulich-Societa Triestina di Navigazione, Compagnie Generale de Navigation a Vapeur, The Export Steamship Corporation, and Isthmian Steamship Company, hereinafter referred to as Cosulich Line, Fabre Line, American Export Lines, and Isthmian Lines, respectively.

Complainant alleges, in substance, that defendants refuse to admit it to membership in the conference and that the conference agreement,² therefore, is unjustly discriminatory and unfair as between complainant and defendants, subjects complainant to undue and unreasonable prejudice and disadvantage, and operates to the detriment of the commerce of the United States; further, that defendants have established and are maintaining a system of exclusive patronage contracts under agreements or understandings not filed or approved pursuant to section 15 of the Shipping Act, 1916, and that such contracts and agreements or understandings result in undue and unreasonable preference and advantage to shippers who patronize defendants' lines exclusively, subject complainant to undue and unreasonable prejudice and disadvantage, and operate to the detriment of the commerce of the United States. We are asked to require defendants to admit complainant to full and equal membership in the conference or, if we lack such power, to disapprove and cancel the conference agreement and require defendants to cease and desist from demanding, charging, or collecting rates based on exclusive patronage lower than those that would otherwise be applicable.

The conference agreement in question was approved by the United States Shipping Board February 26, 1930. Its declared purpose is "to promote commerce from North Atlantic ports of the United States of America to Egyptian (Mediterranean), Palestinian, Syrian, Grecian, Turkish, Russian (Black Sea), Bulgarian, Roumanian, and Adriatic ports for the common good of shippers and carriers by providing just and economical cooperation and avoiding uneconomic competition between steamship lines operating in such trades." Among other things, it provides that "Any person, firm, or corporation now or hereafter engaged in operating a regular service in the aforesaid trade may become a member of this Conference upon agreeing to perform and abide by this Agreement and rules and regulations thereunder, which agreement shall be signified by signature of this Agreement."

In December 1935 complainant announced its intention to operate a regular monthly service in the trade covered by the agreement and applied to the conference for membership therein. The latter suggested that it be furnished the names of complainant's officials, the specific ports within the conference range from and to which complainant intended to operate, the flag or flags complainant's vessels would fly, and the vessels complainant would employ on its first three sailings, together with their sailing dates. Thereupon complainant expressed a desire to withdraw its application from con-

² United States Maritime Commission Conference Agreement No. 133.

sideration until such time as it was able to supply the information indicated. Two days later it again applied for membership, listed the names of its officers, and expressed the intention to inaugurate a service to Egypt and the Levant with one sailing monthly to the ports of Alexandria, Jaffa, Haifa, Beirut, Piraeus, all within the conference range, and such other ports as cargo conditions warranted. For the immediate future, it stated, it proposed to operate Scandinavian motorships or, possibly, freighters under the British flag, depending entirely on charter and economic conditions. It said that it was not prepared at the time to furnish specific names of vessels or sailing dates, but endeavored to assure the conference that it would berth tonnage well suited for the trade and that it would try to arrange its sailing dates to the best advantage of all concerned. Under date of December 21, 1935, it was notified by the conference that the information submitted and other known facts relating to the trade indicated that it was not entitled to be regarded as a regular line in the trade within the meaning and interpretation of the conference agreement. It was also informed that the names of the vessels to be employed by it and their sailing dates should be specified as a preliminary to further consideration. Complainant replied that its first sailing would be on or about January 18, 1936, the second approximately February 15, 1936, and the third about March 14, 1936. The Norwegian motorships *Talisman*, *Hoegh Trader*, and *Hoegh Merchant*, respectively, were nominated, complainant reserving the right to make substitutions. On January 7, 1936, the application was declined. Thereafter it was renewed three times without success. At the time of the last renewal complainant had made two sailings in the trade: the motorship *Tonsbergfjord* September 5, 1936, and the steamer *Idefjord* October 7, 1936.

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 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 the Shipping Act, 1916, we may disapprove, cancel, or modify it. If it be disapproved, it will be unlawful for defendants to carry it out, directly or indirectly, in whole or in part. Complainant seeks admission to the conference in preference to disapproval of the agreement.

Complainant was incorporated in November 1935, at which time there were transferred to it the good will of the business and the right to use the trade name of Phelps Brothers and Company, a New York copartnership established in 1830. This copartnership, as merchants, common carrier and agent of common carriers, pioneered in developing the trade and commerce of the United States with Adriatic and Levant countries. It also was a party to the North Atlantic-Adriatic, Black Sea and Levant Conference Agreement approved by the United States Shipping Board June 26, 1923, which was in effect until superseded by the present agreement. On January 1, 1930, it became inactive and resigned from the conference. Upon the transfer of its rights to the trade name and the good will of its business to complainant it was dissolved. One of the partners acquired a financial interest in complainant, and another became president thereof.

It is testified by the latter that from the date complainant first applied for conference membership it made efforts to engage in the trade but found that the greater part of the business was tied up under contracts between shippers and defendants. These contracts provide, among other things, that in consideration of the rates and other conditions stated therein, the shipper agrees to offer to defendants for transportation on vessels which may load at Baltimore, Boston, Philadelphia, and New York all of the shipments of the commodities therein mentioned made or controlled, directly or indirectly, by him, his agents, and/or subsidiaries to conference ports during a specified period.³ If defendants fail to name space within 3 business days after the shipper duly applies therefor on a vessel scheduled to sail from the port of shipment desired within 15 days after the shipment date desired, he may secure space for the shipment elsewhere without prejudice to his right to future shipment under the contract. He may avail himself of the services of any or all of the defendants, as follows: approximately 15 sailings per year by the Cosulich Line, which serves Fiume, Trieste, Venice, Patras, and Piraeus; 26 sailings per year to Alexandria, Haifa, Jaffa, and Beirut, and 36 sailings per year to Piraeus, Istanbul, and Constanza by American Export Lines; and 15 sailings per year by Isthmian Lines, which calls at Alexandria, Port Said, and, if there is sufficient cargo,

³ One year, excepting automobiles, auto trallers, busses, trucks, chassis, and parts, for which the contract period is 11 months.

Jaffa, Haifa, and Beirut.⁴ To obtain the contract rate on a particular commodity to one port the shipper must agree to make all of his shipments of the same commodity to all other conference ports on defendants' vessels.

The record shows that the contract rate system was first established in the trade about 1925, when the superseded conference agreement hereinbefore referred to was in effect, and that it is now maintained under the provisions of the conference agreement herein assailed. The contract rates, like other rates of defendants, now are filed with the Commission pursuant to order entered in *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470.

The contract rates do not apply on all commodities, but where a contract rate is established the shipper must, if he patronize defendants,⁵ either enter into a contract or ship at the noncontract rate, which is 20 percent higher than the contract rate, subject to a minimum spread of \$2 per ton. In either event, whether the contract or noncontract rate is assessed, the transportation service is the same, the purpose of the contracts being, according to defendants, "to assure shippers uniformity and stability, as well as to assure the carriers of a steady flow of traffic in the commodities covered thereby."

Witnesses in the employ of five shippers testified at the hearing. Three of these shippers have not entered into contracts with defendants. As to them, therefore, complainant can have no grievance. Two are parties to such contracts, one a shipper of boilers to Yugoslavia, which is not within the range of complainant's present or intended operations, the other an exporter of automobiles, trucks, and parts to Alexandria, Piraeus, Salonica, Jaffa, Haifa, and Beirut. It is asserted that the latter would prefer to make its shipments without executing contracts in order to be free to patronize any line it chooses, but that it enters into them to avoid paying the higher noncontract rate. It is not shown that the noncontract rate on its shipments or any other commodity is unreasonable or that the contracts operate to the detriment of its business or commerce in general. Indeed, it is the contract shippers, of which it is one, that are alleged to be unduly preferred. In order to establish such preference, undue prejudice of some other shipper should be shown. To do this it is of primary importance that there be disclosed an existing and effective competitive relation between the prejudiced and preferred shippers. *H.*

⁴ Fabre Line has been inactive in the trade since June 1934. The vessels which it operated prior to that time now ply exclusively between Mediterranean ports.

⁵ Besides the services of complainant and defendants, the only other direct service in the trade is that of Ellerman & Bucknall Steamship Company, Ltd., whose vessels call at Alexandria about once every fourteen days on their way to the Far East. By indirect routes, cargo may be transhipped at London, Antwerp, Hamburg, and other European ports.

Kramer & Company v. Inland Waterways Corporation et al., 1 U. S. M. C. 630, 633. Undue prejudice of any shipper is not alleged, and neither undue preference nor undue prejudice of any shipper is shown. As stated in *Gulf Intercostal Contract Rates*, 1 U. S. S. B. B. 524, with reference to contract rate systems in foreign commerce, whether any such system is lawful is a question which must be determined by the facts in each case.

We find, therefore, that the allegation that defendants have established and are maintaining a system of exclusive patronage contracts under agreements or understandings not filed or approved pursuant to section 15 has not been sustained, and that defendants' conference agreement and contracts with shippers entered into pursuant thereto have not been shown to result in undue or unreasonable preference or advantage to shippers who patronize defendants' lines exclusively or to operate to the detriment of the commerce of the United States. Whether the conference agreement and contracts are unjustly discriminatory and unfair as between complainant and defendants, and subject complainant to undue and unreasonable prejudice and disadvantage, will now be considered.

Although complainant has quoted rates about 10 percent lower than the conference rates, this inducement to patronize it has not been sufficient to offset the value to shippers of the combined defendants' services. The latter concede that they carry between 80 and 85 percent of the freight moving in the trade, and the testimony that the greater part of it is transported under the contracts hereinbefore described is undisputed. If complainant were granted the membership it seeks, it would be entitled to participate in the contracts and would be on an equal footing with defendants in competing with them for contract cargo.

A witness who represented the Cosulich Line at conference meetings testified that he voted to deny complainant membership because, so far as he knew, it had no financial backing and upon the thought that there was no room in the trade for an additional service. In this connection, another witness stated that complainant started with more capital than some of the defendants had when they began to operate, and the record discloses that since October 1936, American Export Lines has increased its sailings from two to three per month to "take care of the homeward movement and the prospective east-bound movement." Moreover, as admitted by the traffic manager of American Export Lines, where a carrier is already in the trade the vessel tonnage is not increased by reason of its admission to the conference.

At the time of hearing, complainant had made four sailings in the trade: the motorship *Tonsbergfjord*, September 5, 1936, with 1 U. S. M. C.

general cargo and mail, from New York to Casablanca,⁶ Alexandria, Port Said, Piraeus, and the Persian Gulf;⁶ the steamer *Idefjord*, October 7, 1936, with general cargo and mail, from New York to Casablanca,⁶ Alexandria, Port Said, Piraeus, and Istanbul; the motorship *Tonsbergfjord*, November 21, 1936, with general cargo and mail, from New York to Casablanca,⁶ Gibraltar,⁶ Alexandria, Port Said, Piraeus, and Istanbul; and the motorship *Bayard*, December 10, 1936, with general cargo and mail, from New York to Casablanca,⁶ Alexandria, Port Said, Piraeus, Istanbul, Izmir, Beirut, and Haifa. All of these vessels and another, the *Brenas*, which arrived at New York October 10, 1936, with a cargo of dates from the Persian Gulf,⁶ were operated under charters for the one-way or round trip, complainant owning no vessels and depending entirely upon chartering to carry on its business. The steamer *Idefjord* was scheduled to sail again January 16, 1937, from New York to Casablanca,⁶ Port Said, Piraeus, and Istanbul.

Although the conference, at the time complainant applied for membership, asked for the names of vessels and sailing dates for only three sailings, the representative of the Cosulich Line did not think the four sailings made by complainant between conference ports were sufficient to constitute a regular service. He expressed the view that a regular line should be considered as one that has been in operation for a year, which appears to be out of accord with other testimony given by him that neither an advertised nor actual sailing is necessary for admission to the conference. Under the superseded agreement,⁷ the American Palestine Line, which owned one vessel, was admitted to membership before its first sailing.

Defendants stress the fact that complainant's service is operated with vessels which it neither owns nor has under time charters "in sharp contrast with that of the other lines in the trade, operating either their own vessels or vessels under time charter." According to the record, whether complainant operated trip-chartered, time-chartered, or its own vessels the conference would be no differently affected by its membership therein. Isthmian Lines, which owns its vessels and has been in the trade since 1922, was admitted to the conference about one month prior to the date complainant first applied. That the effect on the conference of the latter's admission would be no different from that of the former's is conceded.

The record also discloses that although the Fabre Line has not operated a vessel in the trade since June 1934, it has retained its mem-

⁶ Not within the conference range of ports.

⁷ This agreement provided that such owners, managers, and loading agents of steamers that might load in the trade as were willing to be bound by the rules of the conference were eligible for membership.

bership in the conference and, with the other defendants, voted to decline complainant's application. Its right to vote, which is questionable, is not in issue and is not, therefore, determined. The point here is that it is considered to be a regular carrier in the trade and enjoys full and equal membership in the conference, which complainant is denied. Such discrimination is manifestly unjust.

Defendants' witness, who has been long and intimately connected with the steamship business, is of the opinion that if the conference agreement be disapproved there will be a natural tendency to increase brokerage rates and lower the freight-rate structure, with consequent demoralization of the trade. In another proceeding,⁸ it is shown, he expressed the view that there should be some means of requiring carriers to become conference members. If complainant's application for membership were granted, no reason for disapproving the agreement would exist.

An examination of the cases relied upon by defendants in support of their denial of complainant's application reveals that such cases are distinguishable from the instant case either from the standpoint of the issues involved or the essential facts upon which the decisions rest.

We find that complainant is entitled to membership in the conference on equal terms with each of the defendants and that the conference agreement and contracts assailed result in unjust discrimination and are unfair as between complainant and defendants and subject complainant to undue and unreasonable prejudice and disadvantage. Defendants will be allowed ten days within which to admit complainant to full and equal membership in the conference, and if upon the expiration of that time they shall not have done so, consideration will be given to the question of issuing an order disapproving the conference agreement.

By order of United States Maritime Commission:

[SEAL]

(Sgd.) TELFAIR KNIGHT,
Secretary.

WASHINGTON, D. C.,
March 29, 1937.

⁸ Section 19 Investigation, 1935, *supra*.

UNITED STATES MARITIME COMMISSION

No. 438

COMMODITY RATES BETWEEN ATLANTIC PORTS AND GULF PORTS

Submitted June 22, 1937. Decided June 26, 1937

Schedules naming increased rates on various commodities between Gulf ports and north Atlantic ports, found justified in part. Rates on binder twine and proposed effective date rule on grain milled in transit found not justified. Appropriate order entered.

Robert E. Quirk and *Frank W. Gwathmey* for respondents.

W. L. Guice, E. P. Byars, Frank A. Leffingwell, D. R. Simpson, C. B. Bee, Thomas L. Philips, Paul T. Jackson, D. H. Berry, Lawrence F. Daspit, William Graves, V. T. Zwinak, M. J. McMahon M. L. Dickerson, L. D. Estes, J. H. Greene, John Movar, Jr., H. R. Paul, E. H. Thornton, E. E. Dullahan, L. D. Smith, B. T. Hodges, and Murray L. Gibson for protestants.

REPORT OF THE COMMISSION

BY THE COMMISSION :

Respondents, common carriers by water in interstate commerce, by schedules filed to become effective May 1, 1937, proposed to increase the rates on most commodities which they transport between United States ports on the Gulf of Mexico and United States ports on the Atlantic coast north of and including Norfolk, Va. Schedules containing rates between the same ports and joint rail-and-water rates applicable via Gulf of Mexico ports were filed with the Interstate Commerce Commission by respondents and by rail and water carriers subject to the jurisdiction of that Commission.

Upon protests of various shippers and port representatives this Commission, acting under authority of section 18 of the Shipping Act, 1916, withheld approval of the schedules containing rates on cotton, grain and grain products, paper bags, wrapping paper, pulpboard, wallboard, canned goods, binder twine, charcoal, bones and bone meal, north-bound, and scrap or waste paper, south-bound.

1 U. S. M. C.

The present and proposed rates, in cents per 100 pounds, in car-loads except when otherwise noted, on the commodities here considered, and the percentages of increase are shown below:

Commodity	Present	Proposed	Amount of increase	Percentage
<i>Northbound</i>				
Cotton, any quantity.....	30	33	Cents 3	10
Grain.....	20	24	4	20
Wrapping paper.....	18	23	5	27.77
Wallboard.....	28	37	9	31
Canned goods.....	36.5	41	4.5	12.33
Binder twine.....	31	42	11	35.48
Bone meal.....	26	31	5	19.23
<i>Southbound</i>				
Scrap paper.....	25	27	2	8

Rates on some of these commodities and several others, filed with the Interstate Commerce Commission, were suspended by that commission. Because of the similarity of the issues the Interstate Commerce Commission and the Maritime Commission arranged to hear the cases jointly on the same record and oral argument was heard before both commissions sitting together.

In justification of the proposed rates, respondents point to the rising costs of operation reflected in increased wage scales and cost of fuel and supplies, and urge that the increased rates are necessary to enable them to maintain adequate transportation service. They maintain that during the past several years they have in some cases been operating at a loss. According to exhibits of record the Clyde-Mallory Lines operated at a deficit during the years 1933 to 1935 ranging from \$239,906.13 in 1933 to \$759,510.49 in 1934. They show a net income of \$193,502.16 in 1936. Mooremack-Gulf shows deficits of \$18,576.99 in 1934 and \$29,494.14 in 1935. The Bull Steamship Company shows no deficits between 1933 and 1936. Its net income ranges from \$3,656.17 in 1933 to \$133,777.16 in 1936. During the years 1934 to 1936, inclusive, Pan-Atlantic operated on net incomes from \$3,278.56 in 1934 to \$66,016.04 in 1936. Between 1933 and 1936 Southern Steamship had no deficit, its net income ranging from \$26,678.91 in 1934 to \$167,508.80 in 1933. During the period April 18, 1935, to December 31, 1936, respondents enjoyed the benefit of emergency charges. Between 1933 and 1936 the lowest operating ratio is shown to be 87.9 and the highest 100.88.

Respondents show the ages and tonnage of all ships operated in this trade and that the average age is 19.23 years. The oldest is the Clyde-Mallory Line "Brazos" built in 1899. They urge that additional revenue is necessary to enable them to make replacements.

Stevedoring and maritime wage scales have recently increased and prices of fuel and supplies are higher than during the past several

years. Respondents estimate that crew wages have increased nearly 30 percent over 1933. They state that for a given freight ship the monthly wage in 1933 averaged \$2,625 per month whereas in 1937 it is about \$3,317 per month. Using the Clyde-Mallory Lines as representative, the fuel cost, 1936 over 1933, was \$561,178.

Respondents state that the general increases, including rates that have gone into effect May 1, 1937, approximate an average of 22.5 percent. Increased costs of fuel, 1937 over 1933, are about 26 percent; increased wage scales appear to be about 30 percent; and they estimate cost of repairs and supplies to have increased about 54 percent, 1936 over 1933.

It should be stated that neither this Commission nor any of its predecessors has prescribed or approved a general maximum rate structure for application between Gulf and north Atlantic ports. Present rates have been established voluntarily, apparently on the basis dictated by competitive conditions and with little regard to the establishment of a scientific rate structure. The bulk of this coastwise traffic moves to and from interior points served by rail carriers. Port-to-port rates of lines subject to the Panama Canal Act, port-to-port rates used in combination with rates of rail carriers for application on shipments moving over through rail-and-water routes, and joint rail-and-water rates are not subject to the jurisdiction of this Commission. The Interstate Commerce Commission has prescribed rates of the types described above and respondents' position is that since none of the proposed rates exceeds such prescribed rates or rates related thereto, the proposed rates before us do not exceed maximum reasonable rates. While this argument may be persuasive it is not controlling.

The divisions which the water lines receive out of joint rail-and-water rates are not shown of record. However evidence submitted is convincing that respondents are in need of additional revenue and that the filing of schedules reflecting a general increase in rates has been justified. The question of whether the specific rates under consideration are within the bounds of reasonableness required by section 18 of the Shipping Act, 1916, must still be determined.

The record contains no material evidence that the increased rates on cotton, canned goods, and scrap paper are unreasonable. On the other hand, respondents have shown the need for additional revenues to meet increased costs for wages, fuel, operating and other expenses. The increases on other commodities are larger and will be discussed in more detail.

Testimony of record shows that little, if any, of the grain and flour from Gulf to north Atlantic ports moves on local port-to-port

rates. The evidence dealing with these commodities relates almost wholly to rail-and-water rates over which this Commission has no jurisdiction. Respondents also propose a rule providing that as to flour milled in transit the rate will be that in effect on the date of forwarding the flour from the transit point irrespective of the date of shipment into the transit point. Transit is granted by rail carriers and has no application in connection with movements by water unless the shipments move as through shipments from interior country points of origin to final destination. Our jurisdiction extends only to local port-to-port transportation, and on such traffic the rate is that published in the tariff in effect at time of shipment. The rule is not approved and should be cancelled.

The proposed rates on wallboard, wrapping paper, paper bags, and pulpboard represent increases ranging from approximately 27 to 31 percent. Respondents show that on wallboard they absorb the cost of switching of 2 cents per 100 pounds, minimum \$9, maximum \$11.50, per car, or 3 cents for drayage from plant to dock, and accord split delivery at an estimated cost of 5 cents per 100 pounds for segregation; and that on the other commodities referred to a large proportion of the deliveries at New York are made according to marks, brands, and sizes involving a segregation expense estimated at 5 cents per 100 pounds. If the costs for these services are deducted from the rate the resulting rates do not seem excessive. The increases on bone meal are 19.23 per cent. Protestant has not given its value and other pertinent rate-making factors are not developed on the record. Respondents state that this article is highly odorous and requires special stowage. In view of the stowage difficulties the proposed rate does not seem unreasonable.

On binder twine an increase of 35.48 per cent is proposed. Protestant offered little substantial evidence with respect to the reasonableness of this rate. On the other hand, respondents offered no justification for the increased rate and, therefore, have not borne the burden of justifying it. The increased rate should be cancelled.

We find that the proposed rate on binder twine and the proposed rule with respect to the effective date of rate changes on grain milled in transit have not been justified. We further find that the proposed rates on other commodities here in issue have been justified. This finding is without prejudice to further findings which might be made upon an adequate record in a formal complaint proceeding. 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 26th day of June A. D. 1937

No. 438

COMMODITY RATES BETWEEN ATLANTIC PORTS AND GULF PORTS

It appearing, That by order dated April 30, 1937, the Commission withheld approval of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and entered upon a hearing concerning the lawfulness of said schedules;

It further appearing, That a full investigation of the matters and things involved has been made and that said 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, and has found that respondents have justified said schedules, except as to the rates on binder twine and the proposed effective date rule on grain milled in transit;

It is ordered, That the order heretofore entered in this proceeding withholding approval of said schedules, except as to the rates on binder twine and the proposed effective date rule on grain milled in transit, be, and it is hereby, vacated and set aside as of July 10, 1937, and that this proceeding be discontinued;

It is further ordered, That respondents be, and they are hereby, authorized to file schedules effective on not less than one day's notice, announcing the vacation of the Commission's order and naming the date upon which the schedules as approved herein shall become effective.

By the Commission.

[SEAL]

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

UNITED STATES MARITIME COMMISSION

No. 418¹

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

Submitted March 10, 1937. Decided May 21, 1937

Lumber berth quantity allowance rules of Calmar Steamship Corporation and
Weyerhaeuser Steamship Company found unlawful, and ordered cancelled.
No. 424 discontinued.

Roscoe H. Hupper for respondent in No. 424.

Frank Lyon for protestants in No. 424.

H. W. Warley, Russell T. Mount, Roscoe H. Hupper, Thos. H. Shepard, Otis N. Shepard, M. G. de Quevedo, Ramond F. Burley, Joseph J. Geary, T. F. Lynch, William J. Dean, Gerald A. Dundon, E. F. McGrath, George B. Milnor and Mack G. Klosty for respondents in No. 418.

Hugh P. Brady for Brady Lumber Company; *William C. McCulloch* and *K. C. Batchelder* for West Coast Lumbermen's Association; *Walter W. McCoubrey* for Boston Port Authority; *W. Scott Blanchard* for Blanchard Lumber Company; *R. T. Titus* for Intercoastal Lumber Distributors Association; *H. J. Wagner* for Norfolk Port Traffic Commission; *Charles R. Seal* for Baltimore Association of Commerce; *L. B. Anderson* for Guernsey-Westbrook Company; *Samuel G. Spear* for Wiggin Terminals, Inc.; *W. W. Weller* for General Timber Service, Inc.; and *Frank S. Davis* for Maritime Association of Boston Chamber of Commerce.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by respondent Calmar Steamship Corporation. The findings recommended by the examiner are adopted herein.

¹ This report also embraces No. 424, Lumber Berth Quantity Allowances.

No. 418 is an investigation concerning the lawfulness of the services, charges, and practices of respondents in connection with the eastbound intercoastal transportation of lumber and related articles from Pacific to Gulf and Atlantic ports in the United States. All intercoastal carriers regularly engaged in the trade together with on-carriers, were made respondents.

No. 424 is an investigation concerning the lawfulness of Rule L-25, Berth Quality Allowance, published for Weyerhaeuser Steamship Company in Alternate Agent Wells' Tariff SB-I No. 7. The schedule containing the rule was filed to become effective November 14, 1936. Upon protest filed on behalf of certain other intercoastal carriers¹ the operation of the proposed schedule was suspended until March 14, 1937. Respondent Weyerhaeuser voluntarily postponed the effective date to May 31, 1937.

All parties in No. 424 are respondents in No. 418. One of the issues in No. 418 concerns the lawfulness of Rule 24, Berth Quantity Allowance, in Calmar Steamship Corporation's Tariff SB-I No. 7, and testimony was adduced therein on that subject. By stipulation this evidence was incorporated by reference into No. 424, and a hearing was waived. This report disposes of all the issues in No. 424. It deals with No. 418 only in so far as Calmar's Rule 24 is concerned; a supplemental report will dispose of the remaining issues in No. 418.

Unless otherwise noted, rates and allowances will be stated in amounts per 1,000 feet, board measure.

Calmar's Rule 24, which is practically identical to Weyerhaeuser's Rule L-25, makes allowances in the form of deductions from the basic rate based on the quantity shipped and the combined total number of berths used for loading and discharging lumber. The rule was first established by Calmar on June 1, 1933, with allowances ranging from 10.5 cents to \$1.00. Effective December 12, 1935, it was revised to provide the present increased allowances ranging from 50 cents to \$3.52.

The only evidence offered by a respondent in support of the rule was the testimony of the vice-president of Calmar. No brief was filed by Weyerhaeuser. The term "respondent" will hereinafter refer to Calmar. Respondent's witness testified that the allowances under the rule eliminate operating expense incurred in making numerous shifts from port to port and between berths in a port district in the loading and discharging of lumber. In 1935, vessels

¹ American-Hawaiian Steamship Company, Dollar Steamship Lines, Inc., Ltd., (Grace Line) Panama Mail Steamship Company, Luckenbach Steamship Company, Inc., McCormick Steamship Company, Panama Pacific Line (American Line Steamship Corporation—The Atlantic Transport Company of West Virginia), (Arrow Line) Sudden & Christenson, and Williams Steamship Corporation.

of Calmar received lumber at 50 different berths and discharged it at 23 separate berths. At 3 berths most frequently used, the average loads received were 211 thousand, 221 thousand, and 265 thousand board feet, respectively. The average loads discharged at 5 berths most frequently used ranged from 208 thousand to 425 thousand board feet.

Under the more liberal allowances established in December 1935, the loadings increased and during the first 6 months of 1936 approximately 55 per cent of the shipments of lumber in volume qualified for some allowance. And while in 1934 the average per shipment for each berth of loading and discharging was 278 thousand board feet, and in 1935, 323 thousand board feet, the average for the first 6 months of 1936 was 783 thousand board feet. Since December 1935 there have been at least 9 different concerns who have received allowances ranging from 11 to 268 cents. Obviously these are not the actual allowances on the lumber moving under the rule since the minimum allowance is 50 cents.

The rule is further defended on the ground that it enables Calmar more effectively to compete with chartered vessels and other lines having lower minima for shifting vessels. According to respondent, the rule also affords shippers a means of competing with lumber shipped on chartered vessels without incurring the risks that attend the chartering of ships. Respondent points out that the principle underlying the rule is followed in making its less-than-carload rate on lumber 50 cents higher than the carload rate; also, in the practice of adding varying arbitraries to the basic rate, depending upon the length of the lumber, ranging from \$1.00 on lengths over 42 feet, to \$9.00 for lengths over 90 feet.

Opposition to the rule was expressed by representatives of the West Coast Lumbermen's Association consisting of manufacturing, logging, and wholesale lumber companies which represent approximately 80 per cent of the total production of lumber in the so-called Douglas fir region in Oregon and Washington. A witness speaking for the General Maritime Committee of the Association stated that the granting of berthing allowances interjects uncertainty as to transportation costs into the intercoastal rate structure, thus making the c. i. f. market on the Atlantic coast unstable because of the variability in the rates. He testified that quotations were made on business offered on the basis of an assumed berthing allowance, and in many cases the lumber sold at such quotations is not shipped under the assumed berthing allowance, which has a bearish effect upon the Atlantic coast market.

One of the smaller wholesale dealers testified that the rule operates to the detriment of small shippers and confers an undue advantage

on large shippers. Some of the larger shippers operate storage yards on the Atlantic seaboard and are thereby able to buy large quantities for shipment and engage space considerably in advance of the date of shipment. This the smaller shipper is unable to do because he buys and sells firm in small quantities. This witness further criticized the rule because it creates a secret rate known only to the carrier and the shipper, therefore producing a competitive situation that is unfair to the shipper not using the rule.

A dealer who is one of the chief beneficiaries of the rule testified that approximately 50 per cent of his shipments moved over respondent's line. The average allowance on lumber shipped by this dealer under the rule was 87 cents, and on the total shipped over respondent's line the amount averaged 68 cents. He stated that lumber prices in the eastern markets, which at times range from 50 cents to \$1.00 below normal c. i. f. prices, are set by shippers using chartered vessels and lumber companies who own and operate their own steamships. In his view the berth quantity allowances are the only means by which other shippers can meet this competition.

The Intercoastal Lumber Distributors Association, a group of wholesalers and manufacturers who distribute approximately 90 per cent of all west coast lumber shipped intercoastally to the Atlantic coast, advocated an equal ocean freight rate on lumber for all vessels in the trade, but took no position respecting the merits of the rule.

The case turns primarily upon the question of whether the rule is unjustly discriminatory or unduly preferential or prejudicial. In other words, are shippers generally prepared to make shipments in the proposed unit? Is it a recognized unit of quantity adapted to the particular commerce? Are quantity rates of the type here considered an integral part of the lumber rate structure? The answer to these questions is found in the statement of respondent's witness, who admitted that reduced rates under the rule "could not be applied to lumber carrying as a whole, because the bulk of the lumber trade is still carried on by calling at many berths for small quantities of lumber and discharging the lumber at many berths on the Atlantic coast." It is significant also that in 1936 only 9 shippers qualified for allowances under the rule. The loadings of Calmar during 1935 indicate rather clearly that the average shipment of lumber is far short of the minimum required for a berth allowance.

A further criticism of the rule is that it results in an undisclosed rate to the shipper. *United States v. Chicago & A. Ry. Co.*, 148 Fed. 646. Knowledge of the details of shipments subject to the rule is necessary to determine the actual rate charged. The dis-

closure of such information, however, is unlawful under section 20 of the Shipping Act, 1916.

We find that Calmar Steamship Corporation's Rule 24, and Weyerhaeuser Steamship Company's Rule L-25 contravene the provisions of section 14 of the Shipping Act, 1916, which forbids the making of any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered; are unduly and unreasonably preferential or and advantageous to lumber shipped under the said rules and the shippers thereof, and unduly and unreasonably prejudicial and disadvantageous to lumber moving over the lines of respondents which is not shipped under the said rules, and the shippers of such lumber in violation of section 16 of the same Act; and are violative of section 2 of the Intercoastal Shipping Act, 1933, in that they do not show definitely all the rates and charges for or in connection with the transportation of east-bound intercoastal lumber. These conclusions are predicated solely upon the record before us.

Appropriate orders will be entered.

1 U. S. M. C.

ORDERS

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 21st day of May A. D. 1937

No. 418

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

This case, instituted under section 22 of the Shipping Act, 1916, having, as to the issues involved herein, been duly heard, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That respondent Calmar Steamship Corporation be, and it is hereby, notified and required to cancel Rule 24, Berth Quantity Allowance, of its Tariff SB-I No. 7, and all references to said rule in said tariff now contained, on or before June 27, 1937, upon notice to this Commission and to the general public by not less than one day's filing and posting in the form and manner prescribed in section 2 of the Intercoastal Shipping Act, 1933.

No. 424

LUMBER BERTH QUANTITY ALLOWANCES

It appearing, That by order dated November 9, 1936, a hearing was entered upon concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and the operation of said schedules was suspended until March 14, 1937;

It further appearing, That the operation of said schedules has been voluntarily deferred by respondent until May 31, 1937;

And it further appearing, That a full investigation of the matters and things involved has been had, and that this 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 respondent herein be, and it is hereby, notified and required to cancel said schedules, on or before June 27, 1937, upon notice to this Commission and to the general public by not less than one day's filing and posting in the form and manner prescribed in section 2 of the Intercoastal Shipping Act, 1933, and that this proceeding be discontinued.

By the Commission.

[SEAL]

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

UNITED STATES MARITIME COMMISSION

No. 202

COLORCRAFT CORPORATION, LTD.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.¹

Submitted June 11, 1937. Decided August 25, 1937

Complaint alleging rates for intercoastal transportation of woolen, worsted, and wood mohair mixed yarns from ports on the Atlantic coast to ports on the Pacific coast, of the United States, are unreasonable, dismissed upon motion of complainant and intervener.

A. D. Schaffer for complainant and intervener.

Joseph J. Geary for all respondents except Nelson Steamship Company and Isthmian Steamship Company.

James A. Russell for Nelson Steamship Company.

Harry S. Brown for members of Intercoastal Steamship Freight Association.

REPORT OF THE COMMISSION

BY THE COMMISSION :

Complainant corporation alleges, by complaint filed June 12, 1935, as amended, that rates of \$1.29 per 100 pounds, minimum 10,000 pounds, and \$1.805 per 100 pounds, less carload, charged on intercoastal shipments of woolen, worsted, and wool mohair mixed yarns from ports on the Atlantic coast to ports on the Pacific coast, in the United States, were and are unreasonable. Jenkins-Wright Company intervened. Reasonable rates for the future and reparation are sought. Rates will be stated in cents per 100 pounds.

¹ Luckenbach Steamship Company, Inc., Williams Steamship Co., American Line Steamship Corporation, Sudden & Christenson, Isthmian Steamship Company, McCormick Steamship Company, Nelson Steamship Company, Dollar Steamship Lines, Inc., Ltd., Panama Mail Steamship Company, Inc., Weyerhaeuser Steamship Co., Pacific-Atlantic Steamship Co., and States Steamship Company.

A hearing was held beginning March 10, 1936, at which time complainant showed that the rates on knit goods manufactured from the above-mentioned yarns, and on cotton yarns, were lower than rates on the yarns involved herein. There was in addition testimony with respect to the transportation characteristics of the three commodities. At the termination of this hearing complainant requested an adjourned hearing in order to enable it to secure further evidence. The matter was again heard June 11, 1937. Prior to the latter hearing defendants filed amendments to their tariff, changing the rates on the above-mentioned commodities effective June 15, 1937. A tariff check reveals that the rates in issue were increased to \$1.35 carload, same minimum, and \$1.90 less carload. Increases were also made on cotton yarns to 95 cents, any quantity, and on knit goods to \$1.45, any quantity. At the second hearing complainant and intervener moved to dismiss the complaint, without submitting further evidence. No objection was made to the motion.

The rate structure complained of has now been altered by the tariff amendments referred to, and complainant and intervener have withdrawn their request for reparation. Therefore a determination as to the lawfulness of the assailed rates is unnecessary. An order will be entered dismissing the complaint without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of August, A. D. 1937

No. 202

COLORCRAFT CORPORATION, LTD.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

This case being at issue upon complaint and answers filed with the Department of Commerce of the United States, and having been duly heard and submitted by the parties, and complainant and intervener having filed a motion to dismiss said complaint, and no objections having been made thereto; 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 said Department as the successor to the powers and functions of the United States Shipping Board; and the Commission having, on the date hereof, 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 without prejudice to any other regulatory 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. 429

INLAND WATERWAYS CORPORATION

v.

INTERCOASTAL STEAMSHIP FREIGHT ASSOCIATION, ET AL.¹

Submitted May 28, 1937. Decided August 25, 1937

Motion to dismiss granted. Proceeding discontinued.

T. Q. Ashburn, Jr., and W. G. Oliphant for complainant.

Harry C. Ames for intervener, The Mississippi Valley Barge Line Company.

M. G. de Quevedo for defendants.

E. H. Thornton for intervener, New Orleans Joint Traffic Bureau.

REPORT OF THE COMMISSION

BY THE COMMISSION:

The complaint in this proceeding alleges that United States Maritime Commission Agreement No. 5630 is unduly and unreasonably preferential and prejudicial in violation of Section 16 of the Shipping Act, 1916, as amended, and unjust and unreasonable in violation of Section 18 thereof. We are requested to cancel the agreement under Section 15 of the same act. The parties to the agreement are members of the Intercoastal Steamship Freight Association and the Gulf Intercoastal Conference, and are common carriers

¹ American-Hawaiian Steamship Co., American Line Steamship Corporation and The Atlantic Transport Co. of West Virginia (Panama Pacific Line), Calmar Steamship Corporation, Dollar Steamship Lines, Inc., Ltd., Isthmian Steamship Company, Luckenbach Steamship Company, Inc., McCormick Steamship Company, Pacific-Atlantic Steamship Co. (Quaker Line), Panama Mail Steamship Co. (Grace Line), States Steamship Co. (California-Eastern Line), Sudden & Christenson (Arrow Line), Weyerhaeuser Steamship Co. (Pacific Coast Direct Line, Inc.), Gulf Intercoastal Conference, Gulf Pacific Line, Swayne & Hoyt, Ltd. (Managing Owners), Gulf Pacific Mail Line, Ltd., Luckenbach Gulf Steamship Company, Inc.

by water operating between ports on the Atlantic and Gulf Coasts of the United States, respectively, and ports on the Pacific Coast of the United States. Petitions of intervention were filed on behalf of The Mississippi Valley Barge Line Company and New Orleans Joint Traffic Bureau, and were granted.

The agreement was approved January 9, 1937. By its terms it was to continue in effect for a period of six months unless further extended as provided therein. In accordance with this proviso, there was a renewal for a period of one year beginning July 9, 1937.

Article 7 of the agreement reads as follows:

It is recognized, for the purpose of this agreement only, that the territory east of an imaginary line from Michigan City, Indiana, diagonally southeast to Logansport, Indiana, thence south to Frankfort, Indiana, thence following the line of the Chicago, Indianapolis, and Louisville Railroad to Indianapolis, thence following the line of the Baltimore and Ohio Railroad to Cincinnati, shall be deemed to be naturally tributary to the ports served by the members of the Intercoastal Steamship Freight Association (except that, as to Steel Sheets only, Middletown, Ironton, and Postmouth, Ohio, and Ashland, Ky., shall be regarded territory common to both groups of ports) and that territory west of such lines shall be deemed to be naturally tributary to the ports served by the members of the Gulf Intercoastal Conference, and that all points located on such line shall be deemed territory naturally tributary to both groups of ports. It is further recognized that traffic from or to the territory south and southeast of Cincinnati, Ohio, shall flow through its natural port as established by the applicable rail rate structure to and from the ports.

The agreement further provides that the members shall publish, wherever practicable, the same port-to-port rates on all commodities. Other articles of the agreement provide for a cooperative working arrangement whereby rates may be established to insure the rate harmony sought by the agreement.

At the hearing the parties entered into a stipulation regarding the interpretation to be placed upon the agreement by them, stating, (1) that there should be a parity of rates, wherever practicable, as between Gulf and Atlantic ports, and that there should be no adjustment of defendants' port-to-port rates which would disturb the flow of merchandise through the cheapest gateway considering the rail rates, or the rail-barge or barge rates from and to Gulf ports, so long as the latter rates are maintained on the customary relation to corresponding all-rail rates; (2) Gulf lines may establish rail-barge-ocean or barge-ocean rates necessary to meet transcontinental rail competition when there is a bona fide movement to or from the territory naturally tributary to Gulf ports, notwithstanding such rates might incidentally draw tonnage from a territory declared to be naturally tributary to Atlantic ports; (3) the inland water carriers here concerned should be invited to conferences regarding future agreements

respecting the division of territory as between Atlantic and Gulf ports; and (4) that in the event any differential relation to rail rates in the affected territory is to be changed by the inland water carriers, defendants should be invited to comment upon the propriety of such changes.

Upon the submission of this stipulation, complainants moved to dismiss the complaint. The motion to dismiss is granted without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues. An appropriate order will be entered.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of August, A. D. 1937

No. 429

INLAND WATERWAYS CORPORATION

v.

INTERCOASTAL STEAMSHIP FREIGHT ASSOCIATION ET AL.

This case being at issue upon complaint on file, and having been set down for hearing, at which time complainant filed a motion to dismiss said complaint, 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 motion be, and it is hereby, granted without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues, 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. 440

EFFECTIVE DATE RULE—INTERCOASTAL LUMBER RATE CHANGES

Submitted August 19, 1937. Decided September 13, 1937

Schedules proposing changes in effective date rules in connection with east-bound intercoastal lumber rates found unduly prejudicial, but without prejudice to the filing of new schedules in conformity with the views expressed herein. Suspended schedules ordered canceled and proceeding discontinued.

M. G. de Quevedo, Russell T. Mount, and Thomas F. Lynch for respondents.

William C. McCulloch and K. C. Batchelder for protestant.

H. J. Wagner and R. T. Titus for other interested parties.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by protestant and respondents replied. Our findings are substantially those recommended by the examiner.

By schedules¹ filed to become effective May 10, 1937, respondents² propose to change their effective date rule in connection with east-

¹ Alternate Agent Wells' United States Intercoastal Tariff, Twelfth Amended Page No. 116 of SB-I No. 7.

Calmer Steamship Corporation's First Amended Page No. 8 of SB-I No. 7.

² Alameda Transportation Co. Inc., American-Hawaiian Steamship Company, America Transportation Co. Inc. (Arrow Line), Sudden & Christenson, Babbidge & Holt, Inc., Bay Cities Transportation Company, The Border Line Transportation Company, The California Transportation Company, Calmar Steamship Corporation, Chamberlin Steamship Co., Ltd., Christenson-Hammond Line, Crowley Launch & Tugboat Co., Dollar Steamship Lines Inc., Ltd., Erikson Navigation Company, Freighters Inc., (Grace Line) Panama Mail Steamship Company, The Harkins Transportation Company, Havilside Company, Istbman Steamship Company, A. B. Johnson Lumber Company, Jones Towboat Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., McCormick Steamship Company, Marine Service Corporation, Northland Transportation Company, Pacific Steamship Lines, Ltd. (The Admiral Line), American Line Steamship Corporation and The Atlantic Transport Company of West Virginia (Panama Pacific Line), Puget Sound Freight Lines, Puget Sound Navigation Company, (Quaker Line) Pacific-Atlantic Steamship Co., Richmond Navigation & Improvement Co., Roamer Tug & Lighterage Company, Sacramento & San Joaquin River Lines, Inc., Schafer Bros. Steamship Line, Shaver Forwarding Company, Skagit River Navigation & Trading Company, States Steamship Company (California-Eastern Line), Sudden & Christenson, and Weyerhauser Steamship Company.

bound intercoastal lumber rates. Upon protest filed on behalf of West Coast Lumbermen's Association, the operation of the proposed schedules was suspended until September 10, 1937, and voluntarily postponed until October 10, 1937.

Typical ports where west coast lumber is loaded are Bellingham, Everett, Seattle, Tacoma, and Olympia, Wash., on Puget Sound; Aberdeen, Wash., in Grays Harbor; Raymond, Wash., on Willapa Bay; and Longview, Wash., and Astoria and Portland, Ore., on Columbia River. In the Puget Sound area the distances between the ports named range from 25 to 127 nautical miles. From Olympia to Grays Harbor and Portland it is 282 and 405 miles respectively; and from Seattle to Portland it is 356 miles. Vessels may, on a single voyage, load on Columbia River, then Puget Sound and sometimes shift back to Columbia River.

The time consumed in loading a full cargo of lumber varies, depending upon the quantity loaded and the method of operation employed. Loading line-ups of record indicate that a vessel may be scheduled for loading both in Puget Sound and Columbia River on itineraries ranging from 6 to 15 days. Testimony as to actual time required for loading indicates a range from 13 to 21 days.

The proposed rule as published by Alternate Agent Wells, which is substantially the same as the proposed Calmar rule, reads as follows:

This rate applies on all cargo loaded on board the intercoastal vessel on and after the date on which this rate becomes effective.

Under this rule the applicable rate is that in effect when the cargo is loaded on the vessel.

The present Wells rule reads:

This rate will also apply on such cargo booked and confirmed in writing to be loaded on steamers scheduled to commence loading during this period, but if by reason of force majeure to steamer such loading is prevented, this rate will apply at the time cargo is actually loaded.

The applicable rate, according to this rule, is the rate in force when the cargo is booked in the manner specified.

The present Calmar rule reads:

The rate to apply will be the rate in effect upon the date on which cargo is delivered to the dock for, or is delivered alongside vessel by floating equipment for, or rail carrier's arrival notice is received covering cargo moving to the dock by rail for, or the date on which cargo held on dock is released by shipper, owner, or consignee for, intercoastal shipment on the next available vessel.

This rule contemplates that the applicable rate shall be that in effect when delivery is made by the shipper.

Respondents contend that the present rules are too liberal in extending the applicability of a rate after the date on which it would

otherwise be superseded by a new rate. For instance, the rate on eastbound intercoastal lumber was increased on November 1, 1936, from \$12.50 to \$13.00 per 1,000 net board feet. Due to strike conditions respondents' ships were idle in November and December 1936, and January 1937, and as a consequence, 30,922,000 feet of lumber which, prior to November 1, had been booked under the Wells rule or delivered under the Calmar rule at the \$12.50 rate, was shipped at that rate during February 1937. Similarly, 33,878,000 feet were shipped after April 15, 1937, at the \$13.00 rate notwithstanding the rate was increased to \$14.00 on that date. The proposed rule making applicable the rate in effect on date of loading would have insured to respondents the benefit of the above-mentioned increases.

Respondents desire to discard the old rules for the further reason that they obligate the carrier to apply a given rate before the cargo comes completely under their control. Many of the docks at which west coast lumber is loaded are privately owned mill docks. According to their testimony, respondents do not maintain receiving clerks or watchmen at these docks and must therefore take constructive delivery and rely upon the shipper's word to determine the date of delivery and the quantity delivered. Under the proposed rule the rate does not attach until actual possession on board is secured.

Respondents admit that the Wells rule is ambiguous, pointing out the vagueness of the word "also", and the expression "during this period", and particularly the unsettled meaning of the term "*force majeure*." Tariff rules which are indefinite and ambiguous are unlawful under Section 2 of the Intercoastal Shipping Act, 1933.

Protestant's primary objection to the proposed rule is based upon the contention that its application would create marketing uncertainty and perhaps cause a diversion of business to other competing species of lumber. Lumber is customarily sold from 30 to 45 days in advance of shipment when the market is quiet, and from 45 to 60 days in advance when it is active. Bookings are made from one to 90 days in advance of contemplated date of loading. The prevailing freight rate is a part of the c. i. f. price. It is testified that in no case is the seller safe in making a sale unless he has the steamer space definitely protected at a given rate, since in the lumber industry changes in rates are for the account of the seller. Under the present Wells rule and the rule^a suggested by protestant, a shipper can contract for space at a fixed rate on a scheduled vessel; and under the present Calmar rule he is reasonably certain of obtaining the prevailing rate by effecting timely delivery of his cargo. In short, the shipper may safely take for granted the amount of the rate that

^a All rate changes become effective on the published scheduled arrival date of vessel at first loading port in the Oregon and Washington range on and after the published effective date.

enters into his selling price. But the reverse would be true under the proposed rule: the carrier would determine the rate when it elected to load the cargo. This factor of uncertainty, coupled with the possibility of resulting discrimination as between shippers by virtue of the carrier's option as to the order in which it may load shipments, would, according to protestants, interfere with the orderly marketing of lumber.

Protestant also contends that the rule established on lumber should not be less favorable than that accorded other cargo. Agent Wells' and Shepard Steamship Company's tariffs provide that on eastbound cargo, except lumber, rate changes become effective on vessels scheduled to sail from loading port on or after the effective date. Protestant's rule closely follows this provision and therefore takes no account of carriers' problems in accepting delivery of lumber and of maintaining their schedules. On all cargo westbound the above-mentioned tariffs, and those of Gulf intercoastal lines as to all cargo in both directions, publish a rule providing that rate changes will be governed by date of dock receipt or tender of delivery by rail carrier for clearance on the next vessel. Calmar's present rule on lumber also applies on all cargo both eastbound and westbound. The record indicates that respondents maintain a receiving clerk at terminals where general cargo is loaded. Presumably these are not private terminals. But some of this cargo such as canned goods, flour, and grain, which moves eastbound in heavy volume, is loaded at private docks. The record is silent as to how these shipments are received.

In rail transportation the date a car is delivered for transportation determines the rate to be charged. Since delays in securing equipment for rail carriage are negligible as compared with those encountered in water transportation, there is no necessity for an effective date rule in connection with rail rates.

It is generally conceded that many difficulties attend the formulation of a satisfactory effective date rule on lumber. To be reasonable the rule should, as far as possible, meet the commercial necessities of the shipper as well as recognize the operating problems of the carrier, but neither should be controlling. The shipper has certain contractual rights against the carrier for its failure or delay in the performance of the booking agreement. Also, save in exceptional instances he receives thirty days' statutory notice of rate changes during which time he may invoke the Commission's power of suspension. It is believed that if the shipper were given thirty days' additional notice he would be in position to protect himself in the matter of engaging cargo space.

The possibility of discriminatory application of the proposed rule would be largely removed if it were revised so as to provide that all lumber cargo transported on the same vessel would secure the same rate if the vessel begins loading lumber during the effective period of a given rate. The rule so revised would read as follows:

This rate applies on all lumber cargo loaded on any vessel which begins loading lumber during the effective period of this rate.

Such a rule would definitely cut off the applicability of a rate at date of change except in those instances where discrimination results. As to substantially all of the traffic affected, it would afford a definite and practical method for determining when delivery to the carrier is made. Furthermore, the suggested rule would accomplish most of what seems to be respondents' chief objective: freedom from the obligation to transport large quantities of cargo at rates which have expired before the cargo is loaded.

We find that the suspended schedules are unduly prejudicial. An order will be entered requiring their cancellation and discontinuing this proceeding, without prejudice to the filing of new schedules in conformity with the views expressed herein.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 13th day of September A. D. 1937

No. 440

EFFECTIVE DATE RULE—INTERCOASTAL LUMBER RATE CHANGES

It appearing, That by order dated May 6, 1937, the Commission entered upon a hearing concerning the lawfulness of the regulations and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until September 10, 1937;

It further appearing, That the operation of said schedules has been voluntarily postponed by respondents until October 10, 1937;

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 October 10, 1937, 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.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 106

HARBOR COMMISSION OF THE CITY OF SAN DIEGO ET AL.

v.

AMERICAN MAIL LINE, LTD., ET AL.

Submitted August 27, 1936. Decided September 23, 1937

Rates on cotton and other 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 found unduly prejudicial but not otherwise unlawful. Undue prejudice ordered removed, and nonprejudicial basis of rates prescribed for the future.

C. F. Reynolds, Charles H. Forward, H. B. Daniel, and J. W. Brennan for complainants.

H. J. Bischoff for Coast Truck Line, intervener.

H. R. Kelly and J. Arthur Olson for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION :

Exceptions were filed by complainants to the report proposed by the examiner. Our conclusions differ from those recommended by the examiner.

Complainants are the Harbor Commission of The City of San Diego, Calif., the San Diego Chamber of Commerce, Ltd., and various manufacturers and shippers in or near San Diego. They allege by complaint filed June 27, 1933, as amended, that rates maintained by defendants on cotton and other general cargo from San Diego higher by an arbitrary rate of \$2.50 per ton than rates from Los Angeles Harbor, Calif., hereinafter called Los Angeles, and other Pacific coast ports, on like freight to Japan, Korea, Formosa, Manchuria, China, Hongkong, Indo-China, Siam, Straits Settlements, India, the East Indies, and the Philippine and Hawaiian

Islands, hereinafter called the Orient, are unfair, unjustly discriminatory, unduly prejudicial, and unreasonable in violation of sections 15, 16, 17, and 18 of the Shipping Act, 1916. The same allegations are made with respect to defendants' charges for loading and unloading of cars and for handling service in connection with deliveries to or from trucks, barges, or vessels at San Diego. Since the hearing, held in September 1933, handling charges have been made uniform on cargo from all California ports, and the complaint as to such charges will not be considered further. Defendants' rules, regulations, and practices are likewise assailed. Lawful rates, charges, rules, regulations, and practices for the future are sought. Coast Truck Line, a motor carrier operating between San Diego and points in California and Arizona, intervened in support of the complaint. Inasmuch as this case was not submitted until three years after the hearing, the parties were requested to express their attitude toward the desirability of a further hearing for the purpose of bringing the record down to date. In reply they indicated their willingness to stand on the record as made.

Defendants are thirteen common carriers by water¹ which comprised, at time of the hearing, the membership of Pacific Westbound Conference, hereinafter called the Conference, and which are engaged in the transpacific trade between North America and certain ports in the Orient; the "K" Line (Kawasaki Kisen Kaisha), Bank Line, Ltd., Barber Steamship Lines, Inc., and Prince Line, Ltd., carriers engaged in the Oriental trade; and Los Angeles Steamship Company, McCormick Steamship Company, Pacific Steamship Lines, Ltd., and San Diego-San Francisco Steamship Company, carriers serving San Diego in the coastwise trade at time of hearing.

The port of San Diego, situated about 92 nautical miles south of Los Angeles, has a natural, land-locked, deep-water harbor. It is equipped with modern piers, warehouses, and other port facilities, accommodates deep-water vessels, and has ample room for industrial expansion and port development. The population of San Diego in 1930 was 147,995 and of San Diego county, 209,659. San Diego is served by the Atchison, Topeka & Santa Fe railroad, and by the San Diego and Arizona Eastern Railway Company, part of Southern

¹ American Mail Line, Ltd.; The China Mutual Steam Navigation Company, Ltd., and The Ocean Steam Ship Company, Ltd. (Blue Funnel Line); Canadian Pacific Steamships, Ltd.; Dollar Steamship Lines Inc., Ltd.; General Steamship Corporation, Ltd.; Kerr Steamship Company, Inc.; Klaveness Line (A. F. Klaveness & Company, A/S); Nippon Yusen Kabushiki Kaisha (Nippon Yusen Kaisha); Oceanic & Oriental Navigation Company; Osaka Shosen Kabushiki Kaisha (Osaka Shosen Kaisha); Pacific-Java-Bengal Line (N. V. Stoomvaart Maatschappij and N. V. Rotterdamse L'oyd); States Steamship Company; and Tacoma Oriental Steamship Company. These conference lines serve Japan, Korea, Formosa, Manchuria, China, Hongkong, Indo-China and the Philippine Islands.

Pacific lines. Modern highways run from San Diego into the interior, including the Imperial Valley.

The Conference requires a two-thirds vote to determine the rates to be observed by its member lines. According to the record, non-conference defendants observe conference rates under approved agreements. The Conference designated San Francisco and Los Angeles, Calif., Portland and Astoria, Ore., Seattle and Tacoma, Wash., and Vancouver and Victoria, B. C., as "terminal ports" at which members would call for cargo, and "terminal rates" were established from those ports to certain ports in the Orient. The same rate applies from terminal ports whether cargo moves direct or is transhipped from one to another such port before the transpacific movement begins.

Effective October 27, 1931, the Conference established a rate from San Diego reflecting an arbitrary of \$2.50 per ton over the terminal rate, to apply on all commodities except gypsum rock, whether loaded direct or transhipped. Vessels were permitted to call at San Diego for a minimum quantity of 500 tons of gypsum rock. On June 16, 1933, the arbitrary was removed from scrap steel in 500-ton quantities. Effective October 30, 1933, the arbitrary of \$2.50 per ton was made effective on all commodities except cargo moving under "open" rates. From other non-terminal ports rates are made by adding the coastwise rates to the terminal rates. Where a vessel loads at a dock within a terminal port other than a declared terminal dock, an extra charge of \$1.50 per ton is made in certain cases.

At present the arbitrary applies on cargo from San Diego except gypsum rock, minimum weight 500 tons, and articles taking the open rate basis, such as scrap iron and steel. Generally the same minimum weight requirements apply as from terminal ports.

Inasmuch as no substantial evidence was offered on the issue of reasonableness, the primary question presented is whether the \$2.50 arbitrary and defendants' rules, regulations, and practices in respect thereto, constitute undue prejudice or unjust discrimination against San Diego and undue preference of the terminal ports. Specifically, San Diego seeks rate equality with the terminal ports, both as to direct call and transshipment service to the Orient, but it does not object to a minimum of 500 tons, and does not ask for service unless there is sufficient cargo to yield a fair revenue. Defendants contend that the small volume of tonnage originating at San Diego does not warrant rate equality with terminal ports, that low volume increases the cost per ton for service therefrom, and that the arbitrary is necessary to maintain the rate structure.

The evidence submitted by complainants consists largely of a showing of estimated volume of scrap iron and steel, canned fish, manufactured articles, cotton, and other products of agriculture, which would originate at or be handled through San Diego if the arbitrary were removed; and a showing of the competitive relation between complainants and shippers at Los Angeles and other terminal ports.

Cotton exported from San Diego to Japan during the period June 30, 1929, to June 30, 1932, amounted to 9,516 bales, or 2,379 tons, and from San Diego to Europe and Mexico, 77,492 bales. None of the cotton exported to the Orient was subject to the arbitrary since most of it moved on non-conference vessels; and the Conference waived the arbitrary on the remainder which moved via a Conference vessel. During the same period cotton exported from Los Angeles to the Orient ranged in volume from 99,037 bales in 1929 to 182,272 bales in 1932. Only 4,084 bales were shipped from Los Angeles to the Orient in 1926.

One complainant testified to having acquired a vast acreage of land in Lower California, Mexico, which he estimated would produce, when developed, 100 thousand bales of cotton for movement through San Diego. A cotton buyer and exporter located at Phoenix, Ariz., who handles between 18 thousand and 20 thousand bales a year, 60 per cent of which goes to the Orient, stated he would like to have the opportunity to ship through San Diego with the arbitrary removed. It is an overnight haul from Phoenix to San Diego, and rail rates to San Diego and Los Angeles are the same. This witness represents Japan Cotton Company, Dallas, Tex., and testified that in one instance negotiations were started to move a quantity of cotton from Dallas to the Orient through San Diego, but that, when it was found the arbitrary would apply, such negotiations were dropped. The American Cotton Cooperative Association, Bakersfield, Calif., ships about 80 percent of its cotton to the Orient through Los Angeles, Oakland, and San Francisco. It takes the position that there should be more than one open port in southern California and calls attention to the fact that warehousing costs at San Diego are lower than those at Los Angeles. Other cotton growers and shippers representing interests in California, Arizona, and Mexico testified to the same effect.

The traffic manager of the Arizona Eastern stated that if the arbitrary were removed the railroad would solicit cotton for export to the Orient in lots ranging from 50 to 200 tons per month from points on its line. It can deliver cotton from Yuma, Ariz., at San Diego in 9 hours, whereas it takes 24 hours to deliver at Los Angeles from that point.

The record is clear that cotton cannot move from San Diego to the Orient at a rate of \$2.50 per ton more than the Los Angeles rate. The arbitrary amounts to 60 or 62 cents per bale, whereas, at the time of hearing, cotton shippers considered 50 cents per bale as a fair margin of profit. Undoubtedly, if adequate service were maintained, much of the cotton now moving to the Orient from Los Angeles would move through San Diego if the two ports were on an ocean rate parity.

Various complainants and witnesses exporting scrap metals, old rubber, newspapers, and junk point to the growing demand for such articles in Japan and state that while San Diego can originate substantial quantities, they are obliged to ship these materials, with the exception of scrap iron, through other ports. Due to the low value of these articles and intensive competition in the trade, quantities in and near San Diego fail to move at all since shippers are unable to absorb the transportation cost to Los Angeles. The ocean rate on scrap iron from terminal ports to Yokohama, at time of hearing, was \$2.50 per ton. Competitors at Los Angeles are able to ship to the Orient at that rate without any minimum weight requirement. These witnesses stress the fact that although a conference vessel may be loading scrap iron at San Diego, it will not accept other scrap material without charging the arbitrary applicable on those articles. Dealers testified that they could ship 500 to 1,000 tons of scrap and 500 bales of newspapers per month from San Diego to the Orient if the arbitrary were removed. They stated that by mixing scrap metals, newspapers, and old rubber, they could easily comply with a minimum weight of 500 tons. These witnesses were apparently unaware of the fact that, since August 30, 1933, minimum weight restrictions have been removed from shipments of scrap iron and steel.

The Western Salt Company, located about 10 miles from San Diego, producing between 35 thousand and 40 thousand tons of coarse salt per year, cannot sell to Japan in competition with San Francisco shippers. A representative of that firm asserts that it has 10 thousand tons of salt for export yearly, which when marketed would move through San Diego if the arbitrary were removed. The president of complainant Ingle Manufacturing Company, located at San Diego, exporting ranges, furnaces, hot water heaters, ventilating and kitchen equipment to the Hawaiian and Philippine Islands, China, and other world ports, states that he is obliged to ship through Los Angeles and San Francisco in competition with exporters located there and at Seattle, and that he must absorb the arbitrary or pay the coastwise freight of 45 cents per 100 pounds to Los Angeles. He testified that his company would ship through San Diego if a fortnightly service were provided. This concern exported about 1,000

tons the year prior to hearing, about 80 percent of which went to the Orient.

The Southwest Onyx & Marble Company, a complainant located at San Diego, quarries onyx in Mexico, transports it to San Diego by its own motor ships, and prepares the stone for sale in block and slab form. This complainant has shipped to Kobe and Yokohama, Japan, and is seeking a greater market there and in China. Its witness testified that, due to competition of European marble and the arbitrary, it is at a disadvantage in the Oriental market.

The Citrus Soap Company, a San Diego firm manufacturing soap, washing powder, and crude glycerine, was, at the time of the hearing, preparing to market its products in the Orient, particularly in the Hawaiian Islands. Its competitors are the Los Angeles Soap Company, the Procter & Gamble plant at Long Beach, and the Colgate-Palmolive Peet Company, Berkeley, Calif., which sells large quantities of soap in the Hawaiian Islands. Citrus Soap Company urges that a fair competitive relation requires that San Diego enjoy rate parity with the other ports.

Complainant Marine Products Company, of San Diego, sell about 100 tons of canned sea food per month to exporters for shipment to the Orient. Due to the arbitrary this company is obliged to truck its products to Los Angeles for shipment abroad. Other San Diego packers and canners of fish testify they are unable to compete with San Francisco and Los Angeles shippers to the Orient because of the difference in freight charges. One such company, Westgate Sea Products Company, gave up its sardine business as a result of that competition, but would attempt to re-enter the Oriental market if the freight charges were equalized. There are large canneries at Los Angeles packing tuna, sardines, and mackerel.

The Standard Sanitary Manufacturing Company, of Campo, San Diego County, Calif., is compelled to move shipments of filter rock to the Hawaiian Islands through Los Angeles. Its witness testified that while there are other demands in the Orient for its products, sales are turned down because of its inability to meet European prices, which average about \$3.50 per ton less in the Orient. The rate charged by Los Angeles Steamship Company on filter rock from San Diego to Los Angeles is \$2.00 per ton. Movement of feldspar from San Diego direct to the Orient is prohibited by the arbitrary, and the freight to terminal ports for shipment beyond is too high for the shipper to absorb. The potential market for feldspar in Japan is estimated to be 2,000 tons per year. This witness testified that the Standard Sanitary Company could secure one-third of this business if San Diego were on a parity with other Pacific coast ports. A San Diego candy manufacturer, shipping about 5 tons of candy per week

to the Hawaiian Islands in competition with Los Angeles and San Francisco shippers, pays 15 cents per 100 pounds freight to Los Angeles for export in addition to the ocean rate from Los Angeles.

A county agricultural commissioner, representing San Diego County, stated there are about 118 thousand acres now developed for production of grain, hay, lima beans, and other farm produce. There are about 50 thousand acres yet undeveloped, but productive acreage is increasing 2 thousand acres per year. In addition to the agricultural possibilities of San Diego County, minerals, consisting of limestone, gypsum, feldspar, silica, bentonite, and granite, are deposited there. Witnesses from the Imperial Valley point to the agricultural production of that territory and stress the fact that San Diego is the natural gateway for export from that region since it has a mileage advantage over Los Angeles, and the highways to San Diego do not encounter the heavy grades and curves met on the Los Angeles route. In addition to cotton and other products of the soil, the Imperial Valley produces butter, cream, powdered milk, honey, and hides.

Intervener, Coast Truck Line, operates 100 trucks and trailers between points in California and Arizona. It operates regular service between San Diego, Imperial Valley points, and Yuma, Ariz. Its witness compares the distance by highway from Imperial Valley to San Diego and Los Angeles. For example, the distance from El Centro to San Diego is 121.5 miles, while it is 220.5 miles, El Centro to Los Angeles city, which is about 25 miles from Los Angeles Harbor. It stated that if the arbitrary were removed it could haul cotton from Imperial Valley to San Diego for export to the Orient. Cotton from Imperial Valley now moves through Los Angeles.

Defendants' witnesses assert that if general cargo were available at San Diego in sufficient volume to warrant calling for it, they would be willing to pick it up and observe terminal rates to the Orient. The secretary of the Conference stated that 500 tons of cargo is regarded as sufficient to warrant shifting of vessels for it. Defendants take the position that complainants' testimony showing prospective tonnage available at San Diego is speculative and that they cannot be expected to grant terminal rates from that port based upon predictions of future cargo which may or may not materialize. The secretary of the Conference also testified that it is the policy of the Conference to recognize only one port for a given area, but admits that Seattle, Tacoma, Portland, and Astoria are in the same region, are competitive, and that each enjoys the terminal rate. Although defendants maintain that they view the rivalry of the ports of Los Angeles and San Diego from an impartial point of view, their testimony reflects a strong desire to compel cargo to move

through Los Angeles. For example, they testify that if 1,500 tons of cotton were available at Phoenix for movement through San Diego they would not call at San Diego for that cargo because the shipper could deliver the cotton at Los Angeles at no greater expense than at San Diego.

Defendants support the arbitrary as necessary to cover the added transportation costs of placing vessels in San Diego. However, facts presented in support of this contention are meager and fragmentary. No cost studies worthy of serious consideration are of record. The only evidence showing greater costs at San Diego than at Los Angeles is a statement that one company furnishing stevedore and longshoremen services pays labor 10 cents per hour more than the Los Angeles scale. However, the record shows that the stevedore rates paid at Los Angeles vary according to the terms of separate contracts with individual steamship lines. The cost of opening hatches, rigging booms, handling lines, and making ships fast are not shown to be greater at San Diego than at any other port. It is testified that loading at San Diego as the first port of loading requires more shifting of cargo than loading at Los Angeles as the first port of call because of the small volume offered at San Diego compared to that taken at Los Angeles. The fact that vessels must deviate from their course to reach San Diego is also advanced as a cost factor. Defendants overlook the fact that all these considerations apply with equal force to such a port as Astoria, for example. A shipper at Astoria may, under the Conference rules, ship cargo in any quantity lots out of Los Angeles at the terminal rate without paying additional freight charges for the coastwise transportation from Astoria to Los Angeles.

Defendants' testimony to the effect that the arbitrary is necessary to maintain the rate structure is not supported by facts. It is not shown how rates from terminal ports would be affected by placing San Diego rates on the same basis.

Defendants rely upon *Everett Chamber of Commerce v. Luckenbach S. S. Co.*, 1 U. S. S. B. 149, wherein the United States Shipping Board found that arbitraries, applicable on intercoastal cargo to Everett and Bellingham, Wash., over the rates to Seattle and Tacoma did not constitute undue disadvantage in violation of section 16 of the Shipping Act, 1916. The arbitraries there considered were found not to influence the volume of tonnage to the four ports under consideration, and there was no evidence of injury to complainants.

The evidence of record shows that transportation conditions and circumstances at San Diego on traffic to the Orient are not substantially different from those at Los Angeles; that complainants at San Diego are charged higher rates to the Orient than the rates on like

traffic accorded competitors at Los Angeles; that competition is so keen that various complainants find themselves deprived of sales at points in the Orient to which their competitors can ship at the lower rates; that defendants are a common source of the discrimination, effectively participating in and controlling rates from San Diego as well as Los Angeles; and that the arbitrary is not warranted. In the light of these facts the conclusion is inescapable that the rates assailed are unduly prejudicial in violation of the statute.

With respect to the element of low volume of tonnage available at San Diego, relied upon strongly by defendants, it would appear that the presence of the arbitrary has been an influential factor in discouraging the flow of traffic therefrom, and that the establishment of a minimum of 500 tons applicable to San Diego cargo would assure sufficient volume to warrant the removal of the arbitrary. Defendants acknowledge that 500 tons is a reasonable quantity for which to shift a vessel, and complainants have no objection to the observance of that minimum. However, such a minimum should be based on the volume of all cargo offered. It should not be restricted to apply to one shipper or to one item of cargo.

Upon this record we find that the ocean rates assailed and defendants' rules, regulations, and practices with respect thereto were, are, and for the future will be, unduly prejudicial to complainants and unduly preferential of their competitors to the extent that they were, are, and for the future may be, less favorable to San Diego than to Los Angeles, subject to the proviso that observance of terminal rates from San Diego may be conditioned upon cargo offerings at that port in direct call service of not less than 500 tons in the aggregate. An order requiring the removal of the undue prejudice will be entered.

We further find that the rates assailed and defendants' rules, regulations, and practices with respect thereto, are not 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 23rd day of September, A. D. 1937

No. 106

HARBOR COMMISSION OF THE CITY OF SAN DIEGO ET AL.

v.

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

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

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before November 23, 1937, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of property from San Diego, Calif., to points in Japan, Korea, Formosa, Manchuria, China, Hongkong, Indo-China, Siam, Straits Settlements, India, the East Indies, and the Philippine and Hawaiian Islands, rates which exceed those on like traffic from Los Angeles, Calif., to the same destinations, either in direct call or transshipping service: *Provided,* That rates from San Diego may be made subject to a minimum of 500 tons in the aggregate for direct call service.

By the Commission.

[SEAL]

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

UNITED STATES MARITIME COMMISSION

No. 441

OLD BRASS RADIATORS—EASTBOUND

Submitted September 10, 1937. Decided October 15, 1937

Proposed increased rates on old brass radiators from United States Pacific coast ports to United States Gulf and Atlantic coast ports found unreasonable, but without prejudice to the filing of new schedules not inconsistent with the views expressed herein. Suspended schedules ordered cancelled and proceeding discontinued.

E. J. Karr, R. H. Specker, M. G. de Quevedo, and W. M. Carney for respondents.

A. J. Bien, F. E. Marik, George W. Reid, M. Weil, and J. Glant for protestants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by respondents. The findings recommended by the examiner are adopted herein.

By schedules filed to become effective June 1, 1937, respondents¹

¹ Alameda Transportation Co., Inc., American-Hawaiian Steamship Company, America Transportation Co., Inc., (Arrow Line) Sudden & Christenson, Babbidge & Holt, Inc., Bay Cities Transportation Company, The Border Line Transportation 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, Freighters, Inc., (Grace Line) Panama Mail Steamship Company, Gulf Pacific Mail Line, Ltd., The Harkins Transportation Company, Havside Company, Isthmian Steamship Company, A. B. Johnson Lumber Company, Jones Towboat Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., McCormick Steamship Company, Marine Service Corporation, Northland Transportation Company, Pacific Steamship Lines, Ltd. (The Admiral Line), (Panama Pacific Line) American Line Steamship Corporation, The Atlantic Transport Company of West Virginia, Puget Sound Freight Lines, Puget Sound Navigation Company, (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, San Diego-San Francisco Steamship Co., Skagit River Navigation & Trading Company, States Steamship Company (California-Eastern Line), Sudden & Christenson, Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line), Weyerhaeuser Steamship Company.

propose to increase their rates on old brass radiators, automobile or aeroplane, loose or in packages, hereinafter referred to as scrap radiators, from United States Pacific coast ports to United States Gulf and Atlantic coast ports by way of the Panama Canal. Upon the filing of protests the proposed schedules were suspended until October 1, 1937.

Scrap radiators sell for approximately 8 cents a pound delivered and apparently have a minimum stowage factor of about 120 cubic feet to the ton, although the evidence as to stowage is conflicting. The eastbound movement of this commodity ranges from 5,000 to 10,000 tons annually. Scrap radiators fall within a group of commodities which comprise the item JUNK in respondents' tariffs. The present rates are as follows:

Tariff	C. L., minimum 24,000 pounds	L. C. L.	Specification
Agent Wells and Calmar Steam- ship Corporation.	36	56½	Up to 30 cubic feet measurement and \$100 value per net ton. Over 30 cubic feet measurement and \$100 value per net ton.
	46½	72	
Agent Miller	46½	67	No qualification.

The rates proposed are \$1.00 carload, minimum 24,000 pounds, and \$1.75 less-than-carload, loose or in packages, with no qualification as to density or value. In this report the rates applicable on higher cubic density and value will be used, and will be stated in amounts per 100 pounds unless otherwise specified.

In support of the proposed advance respondents point out that the rates on scrap radiators have not been increased since their tariffs were first filed pursuant to the Intercoastal Shipping Act, 1933, that the commodity is being handled at practically less than out-of-pocket cost, that respondents' expenses of operation have increased approximately 15% over the same period of 1936, and that scrap radiators are not desirable cargo.

The proposed increases amount to approximately 115 per cent carload and 143 per cent and 161 per cent less-than-carload, while according to protestants' evidence, the average increase in rates on June 1, 1937, amounted to about 11 per cent. The rate on many of the other commodities in the item JUNK, which formerly took the same rate as scrap radiators, including brass scrap and copper scrap, when in packages, was increased from 46½ cents to 57½ cents carload, and from 72 cents to 90 cents less-than-carload,² or approximately 25 per

² Subject to penalty of 35%, maximum 25 cents per 100 pounds, when shipped loose.

cent. Protestants concede that some increase is justified, but urge that it should not exceed 25 per cent.

The revenue per cubic foot, on basis of a stowage factor of 120, produced by the present rate of 46½ cents, the rate sought of 57½ cents, and the proposed rate of \$1.00, is 7.7 cents, 9.5 cents, and 16.6 cents, respectively. Respondents compare these earnings with the returns on such articles as canned milk, canned salmon, canned fish, fish and products N. O. S., of 20.7 cents per cubic foot, hides and skins, of 25 cents, grain, flour, vegetables and their products, dried fruits, canned fruits, nuts, and copper, ranging from 14.6 cents to 31.8 cents, all except one of which move in considerably greater volume than scrap radiators.

It was testified that one of respondents recently sought to charter a vessel of 8,750 dead-weight tons and 400,000 cubic feet capacity, that being a vessel of the usual type employed in the intercoastal trade, and it was estimated that a return of approximately 18 cents per cubic foot would be necessary to cover the actual operating costs of the vessel. This testimony is speculative and of little value in demonstrating the actual cost of operation of respondents' vessels.

Scrap radiators are not considered desirable cargo, and longshoremen receive 10 cents per man per hour more for handling it than general cargo. The rates on most of the commodities in the item JUNK apply only when the articles are packaged, which method of shipment makes for easier handling and stowing. On the other hand, iron or steel scrap, also included in the item JUNK, has no package restrictions, though less-than-carload quantities are subject to a penalty of 35%, maximum 25 cents per 100 pounds, when shipped loose. There is no evidence as to whether iron or steel scrap is placed in the penalty class by longshoremen.

Protestants' witnesses were of the unanimous opinion that the proposed rate would shut off all intercoastal shipments from the North Pacific ports in favor of mid-western markets. One of these witnesses testified that the total transportation costs of this commodity by water from Portland, Ore., to his refinery at Carteret, N. J., based upon the proposed rate, would exceed the all-rail rate by \$5.16 a ton. It was also testified that the rate would encourage direct shipments from the Pacific coast to such foreign countries as Japan and Germany, which enjoy lower rates, and thus effectively prevent the Atlantic coast smelters and refiners from selling in those markets the copper which is refined from the radiators. The east-bound all-rail transcontinental carload rate on scrap radiators is 92 cents, minimum 60,000 pounds. Protestants are currently receiving

shipments by the rail-Gulf route from San Francisco and Los Angeles at a rate of 62 cents, minimum 60,000 pounds.

Our conclusion from the evidence is that the proposed increases are not warranted. This is without prejudice, however, to the establishment of increased rates properly aligned with the present rates on similar commodities in the junk list. It is not possible to determine from the record what the precise relation should be, but clearly, the rates on scrap radiators, loose or in packages, should be no lower, and perhaps somewhat higher, than the present rates applying on such items in the junk list as brass scrap and copper scrap.

Upon this record we find that the suspended schedules are unreasonable. An order will be entered requiring their cancellation and discontinuing this proceeding, without prejudice to the filing of new schedules not inconsistent with the views expressed herein.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 15th day of October, A. D. 1937

No. 441

OLD BRASS RADIATORS—EASTBOUND

It appearing, That by order dated May 28, 1937, 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 October 1, 1937;

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 the respondents herein be, and they are hereby, notified and required to cancel the said schedules, on or before November 25, 1937, 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.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 439

IN THE MATTER OF EMBARGO ON IRON AND STEEL ARTICLES
TO LAKE CHARLES, LOUISIANA, AND BEAUMONT, TEXAS

Submitted June 5, 1937. Decided November 1, 1937

Embargo by Bull Steamship Line on iron and steel articles to Lake Charles, La., and Beaumont, Tex., found justified. Proceeding discontinued.

Robert E. Quirk for respondent.

C. D. Arnold and *Doss H. Berry* for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Upon complaint of port organizations of Lake Charles, La., and Beaumont, Tex., we ordered respondent, Bull Steamship Line, to show cause why an order should not be entered directing it to cancel an embargo placed April 22, 1937, on iron and steel articles consigned to the above-mentioned ports. The complaints alleged the embargo, would cause loss to shippers, constituted an unjust discrimination in favor of Corpus Christi, Tex., and was unlawful retaliation against Lake Charles for requesting suspension of certain proposed rates. Respondent cancelled the embargo prior to the hearing.

Respondent maintains a regular service between North Atlantic ports and Corpus Christi, Beaumont, and Lake Charles, calling at the latter ports in the order named. Northbound, the vessels also call at several South Atlantic ports. The major portion of the southbound tonnage is destined to Corpus Christi, about 20 percent of the total movement being iron pipe. Beaumont and Lake Charles supply the larger part of the northbound tonnage. At Gulf ports the vessels ordinarily discharge and load simultaneously, which necessitates but a single call at each port. Baltimore is the principal port for loading pipe, which moves in by rail from the Pittsburgh district. Cargo is loaded at Baltimore in reverse order to the ports of call on the Gulf, which is one of the reasons for embargoing the last ports of call and not the first, namely, Corpus Christi. At Baltimore, all

cargo coming by rail must be lightered to the vessel. When shipments of pipe are normal the loading is free from congestion, which permits the vessels to call at the Gulf ports in their scheduled order.

In 1936 and 1937 unprecedented oil well drillings in the Beaumont and Lake Charles districts, together with threatened price increases, caused pipe to move in large quantities through Baltimore to Gulf ports, so that when the embargo was placed, 70 percent of the cargo was pipe. This congested the port of Baltimore, caused other cargo to be shut out, and delayed the sailings. The Gulf ports involved in this proceeding are served by rail and truck lines, and adjacent ports by water lines, making it imperative that respondent observe regular schedules in order to maintain its competitive position. Congestion became so great at Baltimore that out of 55 sailings only 7 were on schedule. The heavy shipments necessitated dual calls at all Gulf ports inasmuch as stowage requirements did not permit simultaneous discharging and loading.

Respondent sought unsuccessfully to remedy the situation by securing additional tonnage. Then it attempted, without success, to secure advance notice from the steel mills of prospective shipments so that proper arrangements could be made to handle it. Respondent does not make firm bookings, but accepts all cargo offered, and therefore has to pay demurrage on barges if it is unable to lift the cargo. All sailings during the period of the embargo were on schedule.

We find that respondent has justified the establishment of the embargo. An appropriate order discontinuing the proceeding will be entered.

1. U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 1st day of November A. D. 1937

No. 439

IN THE MATTER OF EMBARGO ON IRON AND STEEL ARTICLES TO LAKE CHARLES, LOUISIANA, AND BEAUMONT, TEXAS

It appearing, That by order dated May 11, 1937, 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 containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That this proceeding be discontinued.

By the Commission.

[SEAL]

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

UNITED STATES MARITIME COMMISSION

No. 221

STORAGE OF IMPORT PROPERTY

Submitted June 16, 1937. Decided November 16, 1937

Respondents' practice of allowing excessive free storage of import property at the Port of New York found to be unreasonable, in violation of section 17 of the Shipping Act, 1916.

As a reasonable regulation for the future, respondents required to limit the free time allowed on import property at the Port of New York to a maximum period of ten days, Sundays and legal holidays excepted.

Respondents not shown to be engaged in unlawful practices in connection with the storage or delivery of import property at the other North Atlantic ports involved in this proceeding.

J. Sinclair, J. P. Deane, J. F. Andrews, Harry Partridge, Luke D. Stapleton, Jr., James A. Farrell, Jr., Thomas J. Sartor, W. B. Phillips, George L. Holt, H. W. Proom, James B. Young, J. W. O. Von Herbulis, W. McDougall, Roger Siddall, F. J. Tracy, J. E. Light, J. H. Threadgill, T. Eckert, P. J. McManus, E. C. Hastings, W. J. Raeburn, John H. Walker, A. Z. Gardiner, M. E. Knabe, D. H. Andrews, C. W. Kenick, A. V. Perrin, E. H. Gibson, W. E. Stewardson, E. H. Smith, Joseph Donadio, G. J. Morailon, William W. Nash, William J. Rountree, F. Rothe, J. H. Welling, James J. Ryan, R. E. Corbett, Thorvald Tonnesen, F. W. Hartman, A. A. Alexander, C. L. Davis, L. B. Ilgen, Edward Walmsley, William H. Dausey, James E. Magner, C. Krebs, John P. Hanley, B. F. Gaede, Frank N. Bowers, Robert E. Quirk, M. S. Crinkley, Charles S. Belsterling, Thomas F. Lynch, R. A. Murphy, William Goepfert, W. J. Tracy, H. S. Muller, J. McGuinness, J. V. Lyon, A. Kearney, M. A. Coyle, J. P. Zuurmond, William Imlay, Robert Wardle, Robert A. Condy, C. W. Barrett, W. L. Bird, Maurice Storch, T. S. Sprague, John G. Keating, W. J. Mathey, J. J. Halloran, D. E. Bordner, Edward J. Neary, J. W. Praesent, Harry Haas, and K. Martinsen, for various respondents.

Charles R. Seal, Henry E. Foley, Walter W. McCoubrey, Rudolph Robinson, Maurice M. Goldman, H. J. Wagner, S. H. Williams,

H. W. Wills, Charles B. Roeder, R. H. Horton, Julius Henry Cohen, Wilbur La Roe, Jr., Frederick E. Brown, W. P. Hedden, W. H. Connell, W. H. Chandier, W. H. Brusche, C. S. Nelson, C. J. Fagg, Harry H. Snader, Morris S. Rosenthal, A. Lane Cricher, S. J. Steers, L. N. Larsen, and W. W. Weller, for various interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION :

Exceptions to the examiners' proposed report were filed on behalf of many of the respondent carriers and interveners, and the issues were orally argued. The findings adopted herein are substantially those recommended by the examiners.

This is an investigation of 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 Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., and Norfolk, Va. Originally, formal complaints were filed by interests at these ports, except New York, alleging that the carriers named defendants therein permit import commodities to remain on their piers at the port of New York for excessive time without charge, whereas, at the former ports penalty storage charges are assessed after expiration of free time, and that such practices violate sections 16 and 17 of the Shipping Act, 1916. After this investigation was instituted, upon petition of complainants, these complaints were dismissed.

Respondents¹ submitted at the hearing, in writing, information called for by a questionnaire relating to: trade routes; pier facilities; principal commodities transported; rules, regulations, practices, and charges maintained by respondents or affiliates, applicable to storage of import property at the ports named; the costs to respondents in connection with handling import property at the piers; and import property held in storage by respondents or at their expense for more than ten days after discharge from vessel during a test period of five months in 1935. Respondents also furnished copies of bills of lading used by them in the import trade, arrival notices, and other forms pertaining to the arrival and delivery of import goods, which, with the replies to the questionnaire, were made a part of the record. This evidence was supplemented by testimony on behalf of respondents and various North Atlantic port and terminal interests, warehousemen, importers, manufacturers, and shippers.

Respondents, with a few exceptions, maintain regular services in the import trades to one or more of the North Atlantic ports cov-

¹ See Appendix A.
1 U. S. M. C.

ered by this proceeding. The regular services include 55 lines serving New York and one or more of the other North Atlantic ports, 33 lines serving New York alone, and 4 lines that do not serve New York. These services cover many different trade routes and involve the transportation of a wide variety of commodities.

At North Atlantic ports involved, other than New York, rules and regulations governing free time and storage charges on import cargo are enforced by the terminal operators. The free time generally allowed at Boston is six (6) days, and at Philadelphia, Baltimore, and Norfolk five (5) days, beginning with the day following complete discharge of vessel. At Boston wood-pulp is allowed fifteen (15) days and at the other three ports both wood-pulp and crude rubber are usually allowed fifteen (15) days, primarily to conform to railroad practices and regulations. At these ports respondents, as a general rule, do not lease or otherwise control the pier facilities or space used by them, but are assigned berthing space, usually called dockage, and space on the pier to discharge cargo. At railroad piers and at some of the other piers, free dockage is given. Wharf demurrage or storage charges are assessed against the cargo at all these facilities after expiration of free time. In some instances ocean carriers retain control of import property on the pier until delivery, and collect storage charges for the terminal operator; in other instances control is relinquished to the terminal operator after free time, or the property is delivered to the terminal operator immediately upon discharge from vessel. There is no showing that respondents are engaged in unlawful practices in connection with the storage or delivery of import property at the ports of Boston, Philadelphia, Baltimore, or Norfolk.

At the port of New York respondents provide pier facilities, usually at considerable expense, by lease or other arrangement under which they obtain exclusive or partial use of such facilities or space to accommodate cargo discharged, with practically no restriction of free time. They retain control of the property until delivered, and permit consignees or owners thereof to take delivery at their convenience, either by complete or partial lot. The additional pier expenses are absorbed by respondents, notwithstanding definite provisions in their bills of lading and arrival notices requiring consignees or owners to take delivery immediately upon discharge or within a limited time thereafter. Also, the right is reserved to send the merchandise to storage at the risk and expense of owner or consignee, or, in some cases, to assess wharfage or storage charges. Respondents frankly admit they do not enforce these provisions and do not maintain or enforce general rules or regulations governing free time, primarily because it is not the custom of the port or

the practice of competing carriers to limit the period of free time or to make any charge for storage. They state that competition between carriers prevents the limitation of free time by voluntary action, the fear being expressed by some that such action would result in loss of business to competing lines and possibly to competing ports.

Eastern Steamship Lines, Inc., limits the free time on import property at both New York and Boston to six days. Seatrain Lines, Inc., at New York, delivers import property to Hoboken Manufacturers Railroad, which in turn holds the goods in railroad cars subject to a free time allowance of seven days as provided in its tariff. This free time period is applied by Seatrain to all its import traffic except refined sugar on which it allows more time and absorbs the charges for the time beyond seven days.

Competing carriers limit the period of free time at New York on crude rubber from the Far East, coffee from Colombia, and onions and lemons from the Mediterranean, by special agreement. Effective December 1, 1933, carriers engaged in the rubber trade limited the free time period to fourteen calendar days after completion of vessel's discharge. Rubber not removed within the time specified may, at option of carrier, be placed in public storage at risk and expense of the goods. Sundays and legal holidays were excluded, effective February 7, 1934. Agreement No. 4444, approved March 26, 1936, contains the rules fixing the free time on this commodity. Witnesses testified that the reason for the rubber agreement was the heavy movement of this commodity and congestion due to failure to move it out promptly, and that the effect of the charges has been the removal of most of the rubber from the piers within the free time period. There is no showing that the rule on rubber has adversely affected the commodity or diverted any rubber from New York. The record indicates that New York is the principal distributing point for rubber and that there is little competition with other North Atlantic ports for this traffic.

In September 1933, the carriers engaged in the Colombian coffee trade, in agreement with the Green Coffee Association of New York City, Inc., limited the free time on green coffee to 18 calendar days, Sundays and holidays included, starting at 8 A. M. following the complete discharge of the coffee cargo. The steamship companies were to notify consignees of the expiration date of free time, and any coffee remaining on steamship pier or property beyond the agreed free time was to be removed immediately to a warehouse without further notice, at the expense and risk of consignee or cargo. This agreement does not apply to Brazilian coffee on which there is no limitation of free time at respondents' New York piers.

The steamship lines subscribing to this agreement are the Compañia Chilena de Navegacion Interoceanica, Colombian Steamship Company, Inc., Grace Line, Inc., Panama Mail Steamship Company, Panama Rail Road Company, Osaka Shosen Kabushiki Kaisha, and United Fruit Company, all named respondents in this proceeding. Neither this agreement, nor any memorandum thereof has been filed for approval as required under the provisions of section 15 of the Shipping Act, 1916.

The port of New Orleans is not included in this proceeding and the record does not contain sufficient evidence of regulations or practices at that port to afford a basis of comparison in respect of coffee or any other commodity. There is testimony that Brazilian coffee is allowed twenty consecutive days at New Orleans and that Colombian coffee is allowed five days, but it is not shown whether free time begins before or after completion of vessel's discharge, or that the period of free time at New Orleans has been affected by competition with New York. The record indicates that the movement of coffee through New Orleans is influenced primarily by the cost of transportation to interior points.

Carriers engaged in carrying onions and lemons from the Mediterranean have an approved agreement, which has been in existence since 1927, providing for wharfage or storage charges on these commodities at New York. Onions from Spain are allowed four (4) days' free time after discharge from vessel, Sundays and holidays excepted, after which wharfage charges are assessed; and on lemons and other fruit from Italy wharfage charges are assessed from the day the steamer commences discharging.

It is generally admitted that no great effort is made by respondents to compel removal of import cargo until the pier space is urgently needed. Hence consignees use the piers as warehouses until it is convenient for them to take delivery or sell the property. Considerable import cargo has been allowed to remain on the piers at New York in excess of the time generally regarded as reasonably necessary to complete delivery thereof. Answers to questionnaires submitted by approximately one-half of respondent carriers show that during the first five months of 1935, import property was held on their piers for more than ten days after discharge as follows: after 10 days 286,639 tons; after 15 days, 114,918 tons; after 20 days, 64,803 tons; after 25 days, 36,319 tons; and after 30 days, 22,851 tons. The property held on the piers beyond ten days amounted approximately to thirty (30) percent of the total cargo discharged by the same carriers during the period referred to.

The record is clear that certain respondents incur additional expense by granting excessive free time. This added cost results mainly

from extra tiering of cargo, rehandling of shipments, extra hire for clerks, and additional pier rental. But some respondents testified that the privilege is accorded at no additional expense. The absorption by respondents of the extra cost of this service is a valuable concession to those who are advantaged by it, and an unreasonable burden on respondents' transportation revenue.

The practice in question has at times caused congestion on the piers at New York, necessitating the shifting of cargo to make room for incoming cargo. It is said that with limitation of free time ships could be loaded and discharged more expeditiously than at present. A representative of the trucking interests at New York testified that the congestion creates unreasonable expense in connection with the trucking of import merchandise, and makes it difficult to handle export freight.

Representatives of warehousemen at New York testified that the allowance of excessive free time by respondents deprives them of business, and jeopardizes their investment of approximately \$150,000,000 in the merchandise warehousing business; which is devoted to furnishing services required in foreign and domestic trade. Philadelphia and Boston warehousemen represent that the practice diverts merchandise which would normally come to their warehouses. Limitation of free time on import traffic at New York would place the other North Atlantic ports in a better position with relation to competitive traffic, and any increase of import traffic to such ports would naturally result in increased business for the warehousemen.

Evidence was submitted on behalf of the Boston Port Authority that the free time practice at New York results in the diversion of import traffic from competing North Atlantic ports at which the free time is limited. A typical illustration is shown with reference to import tonnage of burlap as follows:

Burlap imports

	Boston		New York			Boston		New York	
	Tons	Per-cent	Tons	Per-cent		Tons	Per-cent	Tons	Per-cent
1922.....	46,041	42.6	60,453	55.9	1932.....	6,570	9.2	51,018	71.1
1923.....	64,828	42.2	80,586	52.4	1933.....	6,459	9.0	49,304	68.4
1924.....	79,053	35.8	128,828	57.9	1934.....	4,885	7.3	48,702	73.1
1925.....	52,037	31.4	106,646	64.4	1935 (6 months).....	1,693	4.2	29,858	74.3
1931.....	11,918	12.2	68,092	67.4					

NOTE.—Percentage computations are based on total shipments to all 5 North Atlantic ports.

These figures show a substantial reduction in the volume of burlap imports at New York, as well as at Boston. The fact that New York increased its percentage of the total burlap tonnage moving to North
1 U. S. M. C.

Atlantic ports was offered as evidence of the diversion of traffic from Boston to New York. In view of the admission that considerable burlap traffic has been lost by all North Atlantic ports to New Orleans, this conclusion is only partly justified. The witness also testified that during his investigation of the competitive situation he called on various large receivers of burlap, crude rubber, sisal, hemp, tapioca flour, cocoa beans, tin, coffee, and other commodities, and in practically every case the reason assigned for not using the port of Boston for their traffic moving to New England and Central Freight Association Territory was the free storage allowed at New York for periods as long as three or four months. While the record fails to show quantitatively actual diversion of traffic from other ports to New York as a result of the situation complained of, it supports the conclusion that the free storage allowed at New York is a valuable concession and a competitive factor of sufficient importance to influence the movement of import traffic.

The record indicates that respondents do not treat all shippers or consignees alike. The restrictions on coffee and other commodities have been mentioned. As to commodities other than those named, the privilege of unlimited free storage is forced by stress of competition between carriers and the record indicates that the amount of free time allowed is influenced in large measure by the demands of particular shippers or consignees. The manner of providing this exceptional facility opens the door to unlawful discriminations and abuses.

Section 17 of the Shipping Act, 1916, provides that every common carrier by water in foreign commerce and every other person subject to the 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. From the foregoing discussion it is obvious that respondents are not complying with this section. 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. As a proper part of their transportation service respondents should allow only such free time as may be reasonably required for the removal of import property from their premises, based on transportation necessity and not on commercial convenience.

Respondents are practically unanimous in favoring a reasonable limitation of free time on import property at New York. They generally suggest that New York should not be placed at a disadvantage with competing ports, and that some commodities may require special consideration because of difficulties encountered in the sale or other disposition thereof, or because, in instances, the commodities are not

of sufficient value to bear the cost of warehousing or pier storage. It is generally admitted that for most import commodities a period of ten days after completion of vessel's discharge would afford ample opportunity for removal from steamship piers at New York. The suggestion that a few commodities may require longer time is based primarily on merchandising problems and commercial convenience, and not on transportation necessity. The allowance of more than ten days on such commodities, including woodpulp, crude rubber, and coffee, is not justified as a proper part of the transportation service. The record does not indicate that the fixing of ten days as a reasonable maximum period of free time on import property would place New York at a disadvantage with competing North Atlantic ports, or that New York requires more than ten days by virtue of practices at ports not included in this proceeding.

We find that respondents are engaged in 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. We further find that the free time allowed by respondents on import property at the port of New York should not exceed ten (10) days, exclusive of Sundays and legal holidays.

We further find that respondents have not been shown to be engaged in unlawful practices in connection with the storage or delivery of import property at the other north Atlantic ports involved in this proceeding.

In some of the exceptions to the proposed report it is stated that there are carriers serving New York who have entered the import trade since this proceeding was initiated and it is suggested that they may not be subject to the order entered herein. All persons subject to the Shipping Act, 1916, whose operations come within the scope of this proceeding will be expected to conform their practices to the principles announced in this report. It is also intimated by certain interveners that respondents may, in effect, nullify the order by assessing merely nominal charges for storage after free time. This of course would plainly violate the spirit of the order, but we may not in advance impute to respondents a desire to defeat the order through subterfuge.

An appropriate order will be entered.

APPENDIX A

LIST OF RESPONDENTS

American Caribbean Line, Inc.
American Diamond Lines, Inc.
American Scantic Line, Inc.
American Scantic Line, Inc. (West Indies Division).
American South African Line, Inc.

American West African Line, Inc.
Anchor Line (1935) Ltd.
Atlantic & Caribbean Steam Navigation Co.
Atlantic Transport Co., Ltd.
American Line Steamship Corporation and The Atlantic Transport Co. of West Virginia (Panama Pacific Line).
Baltimore Insular Line, Inc.
The Baltimore Mail Steamship Co.
The Bank Line, Ltd.
Barber Steamship Lines, Inc.
Bermuda & West Indies Steamship Co., Ltd.
Arnold Bernstein Schiffahrtsgesellschaft m. b. H.
The Booth Steamship Co., Ltd.
Bristol City Line of Steamships, Ltd.
Thos. & John Brocklebank, Ltd.
Bull Insular Line, Inc.
Canadian Government Merchant Marine, Ltd. (Canadian National Steamships).
Canadian National (West Indies) Steamships, Ltd.
The China Mutual Steam Navigation Co., Ltd.
The Clan Line Steamers, Ltd.
Colombian Steamship Co., Inc.
Commonwealth & Dominion Line, Ltd.
Compagnie Generale de Navigation a vapeur, Cyp. Fabre.
Compagnie Generale Transatlantique.
Compagnie Maritime Belge (Lloyd Royal), S. A.
Compania Chilena de Navegacion Interoceanica.
Compania Espanola de Navegacion Maritima, S. A.
Companhia de Navegacao Lloyd Brasileiro.
"Compania Trasatlantica de Barcelona" (successor to Compania Trasatlantica).
Cosmopolitan Shipping Co., Inc.
Cosulich Societa Triestina di Navigazione.
Cunard White Star, Ltd.
Den Norske Amerikalinde A/S Oslo.
Det Forenede Dampskibs-Selskab Akt.
Deutsche Dampfschiffahrts Gesellschaft "Hansa."
Dollar Steamship Lines Inc., Ltd.
Eastern Steamship Lines, Inc.
Elder Dempster Lines, Ltd.
Ellerman & Bucknall Steamship Co., Ltd. (American Australian Line, American & African Steamship Line, American & Indian Line and American & Manchurian Line).
Ellerman's Wilson Line New York, Inc.
The Export Steamship Corporation.
Furness, Withy & Co., Ltd.
Grace Line, Inc.
Gdynia-America Shipping Lines, Ltd. (successor to Polish Transatlantic Shipping Co., Ltd.).
Hamburg-Amerikanische Packetfahrt Actien Gesellschaft.
Houston Line (London) Ltd.
International Freighting Corporation, Inc.
Isbrandtsen-Moller Company, Inc.
Isthmian Steamship Company.
"Italia" Societa' Anonima di Navigazione.

Italia Flotte Riunite Cosulich-Lloyd Sabaudo-Navigazione Generale.
Johnston Line (Liverpool), Ltd.
Johnston Warren Lines Ltd. (successor to Johnston Line (Liverpool) Ltd.-
Warren Line Liverpool Ltd.
Kellogg Steamship Corporation.
Kerr Steamship Company, Inc.
Kokusai Kisen Kabushiki Kaisha.
Koninklijke Nederlandsche Stoomboot Mij., N. V.
Lampport & Holt Line, Ltd.
Lancashire Shipping Company, Ltd.
Linea Sud Americana, Inc.
Manchester Liners, Ltd.
Mitsui Bussan Kaisha Ltd.
Moore & McCormack Co., Inc., and Mooremack Lines, Inc.
Munson Steamship Line (Edward P. Farley and Morton L. Feary, Trustees).
National Steam Navigation Company, Ltd., of Greece.
Navigazione Libera Triestina, S. A.
Nederlandsch-Amerikaansche Stoomvaart Mij., N. V.
Nederlandsche Stoomvaart Mij. Oceaan, N. V.
New York & Cuba Mail Steamship Co.
The New York & Porto Rico Steamship Co.
Nippon Yusen Kabushiki Kaisha.
Norddeutscher Lloyd.
North Atlantic & Gulf Steamship Co., Inc.
Norton, Lilly & Co.
Ocean Dominion Steamship Corporation.
Osaka Shosen Kabushiki Kaisha.
Panama Mail Steamship Co.
Panama Rail Road Co.
Prince Line, Ltd.
Red Star Line, G. m. b. H.
Rederi A/B Svenska Lloyd.
Rederi A/B Transatlantic.
Rotterdamsche Lloyd, N. V.
Roosevelt Steamship Co., Inc.
Seatrain Lines, Inc.
Silver Line, Ltd.
Southgate Nelson Corporation.
C. H. Sprague & Son, Inc.
Standard Fruit & Steamship Co.
Stoomvaart Mij. Nederland, N. V.
Strick Line (1923) Ltd.
Svenska Amerika Linien Akt.
Svenska Amerika Mexiko Linien Akt.
Tatsuuma Kisen Kabushiki Kaisha.
The Union Castle Mail Steamship Co., Ltd.
United Fruit Company.
United States Lines Company.
United States Navigation Co., Inc.
Warren Line (Liverpool) Ltd.
Andrew Weir & Co.
Wessel, Duval & Co., Inc.
Wilhelm Wilhelmsen.
1 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 November A. D. 1937

No. 221

STORAGE OF IMPORT PROPERTY

This case, instituted by the Department of Commerce of the United States 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 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 and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondents named in Appendix A of said report be, and they are hereby, notified and required to cease and desist, on or before January 21, 1938, from allowing more than ten (10) days' free time (exclusive of Sundays and legal holidays) on import property at the port of New York.

By the Commission.

(SEAL)

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

Secretary.

UNITED STATES MARITIME COMMISSION

No. 215

ROBERTO HERNANDEZ, INC.

v.

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

Submitted September 14, 1937. Decided December 20, 1937

Complainant unfairly treated and unjustly discriminated against in violation of Shipping Act, 1916. Complainant injured. Further hearing ordered as to measure of complainant's injury.

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

REPORT OF THE COMMISSION

BY THE COMMISSION :

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued. The findings recommended by the examiner are adopted herein.

Complainant is a New York corporation, engaged in buying and exporting automobiles. Defendants¹ are common carriers by water in foreign commerce subject to the Shipping Act, 1916, as amended.

The complaint filed June 27, 1935, as amended, alleges that from July 1, 1934, to March 31, 1935, inclusive, defendants refused complainant bookings for transportation of automobiles from New York, N. Y., to Bilbao, Spain, stating no space was available; that said statements were false and said refusals were in violation of paragraph

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 allegations of the amended complaint as respects Arnold Bernstein Steamship Company, Inc., Garcia & Diaz, and James W. Elwell and Co., Inc., described as agents for the respective defendant carriers, were abandoned at the hearing.

4 of section 14 of the Shipping Act, 1916. Reparation for alleged injury is requested.

In New York on June 24, 1934, complainant and J. T. de Bareno, an automobile dealer, of Bilbao, Spain, made an oral agreement under which complainant was to ship automobiles of General Motors and Chrysler manufacture from New York to de Bareno at Bilbao. The agreement covered a period of seven months from June to December, 1934, during which complainant was to ship an average of \$25,000 worth of automobiles² per month, f. o. b. New York, exclusive of complainant's commission of 15 per cent. Complainant was to purchase the automobiles at 17½ per cent off factory retail price. Any deficiency in any month's allotment of \$25,000 worth of cars was to be made up during succeeding months of the agreement. An initial letter of credit for \$14,200 in connection with the agreement was opened by de Bareno in complainant's favor on July 2, 1934, to expire August 2, and later extended to October 2, 1934.

Complainant's evidence is that applications for bookings to ship unboxed automobiles under the above agreement were made to defendants' agents in New York City for every sailing of each defendant during the agreement period. Admission by defendants of some of these applications is accompanied by testimony that booking was refused because of lack of space on the particular vessel or succeeding vessel or vessels, that application was too far in advance of sailing date, that application was made on a different date than asserted by complainant's witnesses, that application was for no particular space, or that booking was made and complainant failed to deliver the automobiles for shipment. The record shows that applications for bookings were made to Bernstein Line's agent in early July 1934, on August 2 or 5, and on or about August 25, September 14, October 23 and November 26, 1934; to Gardiaz Line's agent in July 1934, on or about August 10, September 10, in late September, and on or about October 10, November 10 and December 10, 1934, and to Fabre Line's agent in early July 1934, on August 22 or 23, on or about September 5, on September 6 or 10, and on or about September 22, October 5 and December 10, 1934, and that other applications were made on intermediate dates not remembered by witnesses. All applications were made by the representative of Seven Seas Mercantile Transport Company, employed by complainant to procure bookings, and by complainant's president. Complainant's president undertook to engage space after efforts of Seven Seas representative were unsuccessful, informing each defendant's agent of the de Bareno agreement. These applications were made at visits of these persons

² Pleasure automobiles, trucks, and chassis.

at the offices of defendants' agents and by telephone. They were for bookings of cars in lots of 10, 20, 22 or 23, 12 or 15, from 4 to 10, 25, from 20 to 30, from 1 to 20, and for any number from 1 to 100, and were in effect for any space on any sailing.

During the seven-month period of complainant's agreement with de Barenó, Bernstein Line carried one unboxed Dodge sedan³ for complainant to Bilbao. This automobile was booked on or about August 25, 1934, by and in the name of a vice-consul of a foreign country located in New York City, as an act of friendship on his part for complainant's president. Booking for this car had previously been refused complainant's agent Seven Seas and complainant's president. This carrier had sailings to Bilbao on or about July 18, July 30, September 3, September 12, September 27, October 23, and November 27, and unoccupied space for from 15 to 25 unboxed automobiles was available on the September 12 sailing, for probably 30 to 40 on the October 23 sailing, and for 160 on the November 27 sailing. The vessels sailing July 18, September 12, October 23, and November 27, carried 201, 209, 154, and 66 unboxed automobiles, respectively.

Defendant Gardiaz Line carried one shipment of 4 unboxed truck chassis for complainant to Bilbao during the seven-month period referred to. This shipment was on sailing of July 10. Other sailings of this defendant were on or about July 25, August 10, October 11, and December 13. To support its defense of lack of space, this defendant submitted in evidence stowage plans of its vessels sailing October 11 and December 13. These plans indicate that unboxed automobile space in such vessels, except in their lower holds where unboxed automobiles could sometimes be stowed, was fully occupied. Defendant's witness was without information as to why stowage plans covering sailings of July 10, July 25, and August 10 were not also submitted. The general traffic manager of this defendant's agent testified that about "the middle of 1934" he refused space for complainant's cars to Bilbao, his "real reason" being to force payment of a debt of complainant's president for \$93.75 in connection with transportation to South America. Such debt was paid in full on September 19, 1934. Complainant urges this testimony as showing space was available at time of such refusal; also that such debt was not the reason for denial of transportation, as indicated by continued refusals to book after payment thereof, and by a statement of this general traffic manager during his testimony that "I told Seven Seas we would not carry any automobiles for Hernandez, even if Hernandez paid his bill."

³ Chrysler product.

Automobiles of complainant carried by Fabre Line to Bilbao during the seven-month period June–December 1934, consisted of one shipment of 4 boxed truck chassis on sailing of October 8, and one shipment of 3 boxed truck chassis on sailing of November 5. According to the evidence these automobiles were booked by Seven Seas as “Reos and Whites,” being thus described to Seven Seas by complainant’s president because as stated by him “if I said they were Chrysler products or General Motors products they (defendants) would not take them.” Other sailings of this defendant to Bilbao were on or about August 7, September 7, and December 10. Unoccupied space for unboxed automobiles was available on the sailings of August 7, September 7, October 8, and December 10. A witness for this defendant testified to acceptances by him on August 21 of applications for bookings by complainant and complainant’s failure to furnish the automobiles for shipment. These acceptances are stated to have been made by telephone to unidentified persons located in the office of Seven Seas and in the office of complainant. Denial is made by complainant’s witnesses, including Seven Seas, of the telephone acceptances referred to. Defendant’s witness admits one of the shipments he refers to may not have been complainant’s.

Defendant carriers and Compania Trasatlantica comprised the membership of the North Atlantic Spanish Conference during the period of complaint. No service was available from New York to Bilbao except via these conference lines. Application for booking to Compania Trasatlantica was refused with statement of such carrier’s agent that it had space but complainant’s automobiles could not be accepted because their wheel base exceeded a length of 115 inches.

Complainant’s practice in exporting unboxed automobiles is to secure steamship booking and then purchase the automobiles therefor. It maintains contacts with representatives in automobile manufacturing centers from which automobiles covered by previously made bookings are shipped to it at New York. It rarely has automobiles on hand in New York at time of booking. This method of conducting business has been followed by complainant in exporting automobiles throughout the world since its incorporation in 1932. At times during the period of its efforts to obtain bookings from defendants, complainant had small lots of automobiles available in New York City ready to ship to Bilbao.

Complainant’s delivered price in Spain of automobiles it desired to ship to de Bareno was less than the delivered price of similar cars received by manufacturers’ distributors in Spain. Testimony of complainant’s witnesses is that when applying for space they were told by agent of Bernstein Line that a distributor in Spain gave such line more business and would be protected, that such carrier was not

interested in complainant's cars, and that complainant had no chance in the world to get space during that month (August), the following month, or ever; by Gardiaz Line's agent that it was pressed by a distributor in Spain not to carry complainant's cars, and (in August) that it could not accept any Chrysler or General Motors cars from complainant but would take any others, and by Fabre Line's agent that none of the conference lines would accept complainant's cars because of requests from Spain and from General Motors and Chrysler people in the United States. Further testimony on behalf of complainant is that pressure by manufacturers in the United States and by distributors in Spain upon defendants to prevent shipment of automobiles by "independents," such as complainant, was a matter of common knowledge in shipping circles. J. T. de Bareno testified by deposition that during his visit to the United States in May and June, 1934, the agent for defendant Gardiaz Line informed him that Gardiaz Line was "obliged by larger shippers" to refuse his cars.

Except for partial admission by one witness upon cross examination, defendants' witnesses deny the fact or any knowledge of any pressure by manufacturers, their agents, or distributors. To refute these denials, and to corroborate its evidence of the fact of such pressure and that such pressure was the real reason for defendants' refusals to book its cars, complainant exhibits copy of minutes of meeting of defendants' conference of July 14, 1934. Therein defendants and Compania Trasatlantica authorized dispatch of a joint reply to cables to them from an automobile distributor in Spain. These cables are acknowledged by Gardiaz Line's witness to have related to complainant shipping automobiles to Spain in competition with such distributor. Defendants' reply cable expressed a wish to cooperate with such distributor, stated the conference could not refuse shipments of independents, and that "up to present no cars shipped."⁴ Except for the four shipments of complainant's automobiles hereinbefore referred to, defendants' witnesses could point to no General Motors or Chrysler cars carried by any defendant to Bilbao from June 1 to December 31, 1934, inclusive, for other than manufacturers and their agents.

Respecting the first three months of 1935, included in the period of complaint, testimony on complainant's behalf is that after expiration of the de Bareno agreement on December 31, 1934, it had only "a few stragglers—four or five that were shipped in early May." No showing is made of refusals by defendants of applications for bookings during these three months.

⁴Conceded by Gardiaz Line witness to refer to automobiles of independents, as distinguished from automobiles of manufacturers or their agents.

Throughout the period July 1 to December 31, 1934, defendants held themselves out as common carriers of unboxed automobiles from New York to Bilbao. Bernstein Line vessels were so constructed that this commodity could be stowed in practically all of their cargo space. Space for unboxed cars in Gardiaz Line and Fabre Line vessels was more limited, the proper loading of such vessels for navigation requiring base cargo of grain or other weight commodities. Their capacity for transporting unboxed automobiles was nevertheless substantial. 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. The weight of the evidence is that defendants' agents were informed of complainant's agreement with de Bareno. 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. Complainant establishes that certain of defendants' vessels sailing during this continuing request for bookings had unoccupied space in which some or perhaps all of the cars it desired to ship under its agreement with de Bareno could have been carried, and that such undetermined number of cars was not carried solely because of defendants' subservience to manufacturers and distributors with whom complainant was in competition.

We find that defendants unfairly treated and unjustly discriminated against complainant in the matter of cargo space accommodations, due regard being had for the proper loading of the 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 requests reparation in the amount of \$25,050. Such sum is arrived at by calculating complainant's commission of 15 percent upon \$25,000 per month for seven months, or \$175,000, less \$8,000 stated to be f. o. b. New York value of cars shipped. There is no showing, however, that all of the cars represented by the \$167,000 upon which the reparation requested is based could have been carried by defendants; or of the amount of space which was available and value of the cars which could have been carried in such available space. Accordingly, complainant fails to establish the extent of its injury. An order will be entered assigning the case for further hearing solely with respect to the measure of complainant's injury.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 20th day of December, A. D. 1937

No. 215

ROBERTO HERNANDEZ, INC.

v.

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

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

It is ordered, That this case be, and it is hereby, assigned for further hearing solely with respect to the measure of complainant's injury, said hearing to be conducted at such times and places as the Commission may hereafter determine.

By the Commission.

[SEAL]

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

UNITED STATES MARITIME COMMISSION

No. 481

BLOOMER BROS. COMPANY, INC.

v.

LUCKENBACH STEAMSHIP COMPANY, INC., ET AL.¹

Submitted January 19, 1938. Decided January 19, 1938

Rate on pulpboard boxes, pails, and berry baskets, in mixed carloads from New York, N. Y., to Pacific Coast ports found inapplicable in certain instances but not unjust and unreasonable. Undercharges found outstanding on certain shipments. Complaint dismissed.

E. T. Foxenbergh for complainant.

M. G. de Quevedo for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION :

Complainant filed exceptions to the report proposed by the examiners and requested oral argument, which is hereby denied.

By complaint filed March 17, 1937, as amended, complainant corporation alleges defendants' rate in effect between October 3, 1935, and July 5, 1936, on mixed carloads of pulpboard boxes, knocked down, other than corrugated, pulpboard pails, nested, and pulpboard berry baskets or till boxes, nested, from New York, N. Y., to Pacific Coast ports on shipments originating at Newark, N. Y., was unjust and unreasonable. Reparation only is sought. An informal complaint containing the same allegation was filed by this complainant on October 27, 1936, and closed on January 13, 1937. Rates will be stated in cents per 100 pounds.

Mixed carload shipments of pulpboard boxes, knocked down, pulpboard pails, nested, and pulpboard berry baskets or till boxes, transported for complainant during the foregoing period were charged a rate of 75 cents published in Item 2724 of Alternate Agent Joseph A. Wells' Tariff S. B. I. No. 6, effective October 3, 1935. In April 1934, complainant had made and subsequently continued, an application to defendant carriers for a rate of 50 cents on mixed carload

¹ American-Hawaiian Steamship Company, Dollar Steamship Lines, Inc., Ltd., American Line Steamship Corporation, The Atlantic Transport Company of West Virginia (Panama Pacific Line), and Panama Mail Steamship Company (Grace Line).

quantities. Item 2728 of defendants' tariff as revised effective October 3, 1935, embraced pulpboard boxes, egg cases, and other specified commodities, but did not include either pails or berry baskets. That item was published as recommended by the carriers' Neutral Rate Committee and approved by the lines, with rates of 72, 56.5, and 51.5 cents, on minimum carloads of 24,000, 36,000, and 60,000 pounds, respectively, and 140 cents less carload. A member of the Rate Committee testified for defendants that the failure to include pulpboard pails and berry baskets was not an error as it was not the recommendation of that committee nor was it the intention of that group to include those commodities in the new item, and that there was no authorization in that item for the mixture of fibreboard or strawboard boxes other than corrugated, knocked down, flat, or egg cases folded flat, with berry baskets or till boxes. When complainant's traffic manager became aware that pails and berry baskets were not included, immediate application was made to defendant Luckenbach Steamship Company, Inc., for their inclusion in order that mixed carloads could be shipped. Item 2728, however, was not revised until July 5, 1936, when the rates were made applicable on pulpboard boxes other than corrugated, knocked down, pulpboard pails, nested, and pulpboard berry baskets or till boxes, nested.

Complainant's contention "is simply that during the time between October 3, 1935, and the date the effective rate was put in on mixed carloads, we were injured to the extent of the difference between 56.5 cents and 75 cents. Now we contend that the rate of 75 cents applicable on the three mentioned commodities was and still is unreasonable for a minimum of 36,000 pounds, which is the minimum governed by the rate of 56.5 cents." Except for mentioning that the all rail rate was 130 cents, complainant offered no comparisons of rates nor any other evidence supporting its contention that the assailed rate was unreasonable, because its witness "did not think it was necessary" and because "I think the defendant carriers * * * partly agree with me." A reparation basis is not to be found in the expectation or promise that a reduced rate would be established or in the carriers' subsequent, voluntary reduction of a rate, and a mere reduction raises no presumption that the former rate was unreasonable. While a voluntary reduction does not preclude an award of reparation if the prior rate was unreasonable, here this has not been shown.

The rate charged of 75 cents, in Item 2724, was a proportional rate on berry baskets or till boxes, cups, dishes, pails, trays, carton egg case fillers, cake boxes, and suit boxes, as described, "applicable only when shipments originate at points named and has moved as a carload by railroad or other carrier to Atlantic loading port from each in-

terior point named." Newark is one of the named points. Except as noted, the minimum carload weight was 30,000 pounds and by Note 1 "paper pails as described herein may be shipped in straight carloads at a carload minimum weight of 24,000 pounds." Complainant's witness testified that the 75 cent rate under Item 2724 did not always cover the specific boxes "that we might have at that time" and testimony on behalf of defendants was that pulpboard boxes, as such, were not included in this item. Notwithstanding this, paid freight bills show this rate to have been charged on shipments of "PULPBOARD BXS NOT CORRUGATED KDF & PAILS NESTED;" "PULPBD PAILS NOIBN SU NSTD SOLID—BXS PULPBD NOT CORR KDF"; "PULPBOARD BOXES KDF O/T CORR AND PULPBOARD PAILS NSTD"; "PULPBOARD BOXES"; and "PULPBOARD BOXES NOT CORR KDF." Freight bills of Luckenbach Steamship Company, Inc., bear the notation "Item 2724 CL" following the description of the commodities, including instances where the particular consignment was solely of "Ctns pulpboard boxes kdf."

As shown by this record, the rate of 75 cents in Item 2724 was not applicable on pulpboard boxes. In a number of shipments the weights shown are aggregates of boxes and pails, and the volume of pulpboard boxes on which the 75-cent rate was charged cannot be determined. However, the shipping papers reveal that the amount of pulpboard boxes included in some of the mixed carload shipments were in less-than-carload quantities on which the applicable rate was 140 cents. Furthermore, undercharges apparently result from the fact that certain shipments do not weigh the required minimum after deduction of the weight of the pulpboard boxes included in the mixture.

We find that the assailed rate has not been shown to have been unjust and unreasonable, but was inapplicable on shipments of pulpboard boxes. We further find that the application of the assailed rate on less-than-carload quantities of pulpboard boxes and on shipments of pulpboard pails and berry baskets weighing less than the applicable minimum weight resulted in undercharges. 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 19th day of January, A. D. 1938

No. 431

BLOOMER BROS. COMPANY, INC.

v.

LUCKENBACH STEAMSHIP 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. 444

IN THE MATTER OF RATES, CHARGES, REGULATIONS, AND PRACTICES OF
CARRIERS ENGAGED IN TRANSPORTATION OF SUGAR FROM VIRGIN
ISLANDS TO THE UNITED STATES

Submitted November 18, 1937. Decided January 19, 1938

Rate on raw sugar from the Virgin Islands to the United States found unjust and unreasonable, but not unduly prejudicial. Reasonable maximum rate prescribed.

Ocean Dominion Steamship Corporation, not operating between Virgin Islands and United States ports, ordered to cancel tariffs relating to such service. Tariff of American Caribbean Line, Inc., ordered revised to comply with the Shipping Act.

George S. Robinson and *Leslie F. Hunt* for the Department of the Interior and Virgin Islands Company, interveners.

J. E. Light for Bull Insular Line, Inc., and Baltimore Insular Line, Inc.; *W. H. Griffin* and *R. D. Weeks* for Ocean Dominion Steamship Corporation and American Caribbean Line, Inc.; *James F. Butler* for Bermuda & West Indies Steamship Company.

REPORT OF THE COMMISSION

By THE COMMISSION :

No exceptions were filed to the report proposed by the examiner. His findings are adopted herein.

Upon allegations of the Department of the Interior on behalf of The Virgin Islands Company that the rate on raw sugar of 25 cents per 100 pounds from the Virgin Islands to the United States is excessive and unfair, we instituted this investigation to determine whether such rate, and the charges, regulations, and practices in connection therewith are unreasonable or unduly prejudicial. Unless otherwise designated, rates stated are in cents per 100 pounds.

Regular direct line service to the United States from the Virgin Islands is maintained by the Bermuda and West Indies Steamship

Company and the American Caribbean Line, Inc. The Baltimore Insular Line, Inc., and the Bull Insular Line, Inc., also maintain regular transshipment service via San Juan, P. R., in conjunction with a local service of the latter company between San Juan and the Virgin Islands. Respondent Ocean Dominion Steamship Corporation does not operate between the Virgin Islands and United States ports.

The rate on sugar from the Virgin Islands during 1935, 1936, and until April 1937, was 16 cents; prior thereto it was less than 16 cents. The American Caribbean Line in April 1937, and shortly thereafter, the Bermuda and West Indies Steamship Company, advanced the rate to 25 cents. Bull Insular and Baltimore Insular Lines have not transported or quoted rates on sugar from the Virgin Islands since 1929.

The Virgin Islands Company, a Government-owned corporation, has 1,600 acres of land devoted to the cultivation of sugar-cane and purchases the cane of approximately 700 squatters, tenant farmers, and homesteaders. The price of sugar-cane at St. Croix, Virgin Islands, is related to the New York market quotation on sugar, less freight, handling, bagging, and other costs. The effect of the rate increase was to reduce the price of sugar-cane \$0.0054 per 100 pounds or \$3.24 on the average production per acre.

Raw sugar is the principal commodity shipped from the Virgin Islands. Shipments during 1934, 1935, and 1936 amounted to 5,187, 2,493, and 3,737 short tons, respectively. Approximately 1,000 tons were ready for marketing at the time of hearing, which if shipped, filled the island quota of 5,462 tons for 1937. Other commodities exported are turtles, hides and skins, tomatoes, rum, bay rum, and angostura bitters, on which the rates have not been increased.

Virgin Islands sugar is marketed in the United States in competition with that produced in Puerto Rico, Haiti, Jamaica, and Cuba. Distances from principal ports in those islands to New York, N. Y., are 1,465, 1,399, 1,372, 1,474, and 1,227 nautical miles, respectively. The following statement shows rate increases made by respondents on sugar and other commodities in the northbound trade:

Commodity	Origin	Amount of increase	Percentage of increase	Rates from competitive points				
				Haiti	Jamaica	Dominican Republic	San Juan	Havana
Sugar.....	Virgin Islands..	16 to 25	56	Open	20	-----	15	Open
Cocoa beans.....	Trinidad.....	14 to 50	25	45	50	53	50	50
Banak logs.....	Paramaribo.....	16 to 21	32	-----	-----	-----	-----	-----
Molasses.....	Barbados.....	{ 150 and 175 to 200 and 215 }	23 to 33½	195	390	227	130	235

¹ Cents per 100 pounds.

² Cents per cubic foot.

³ Cents per barrel of 650 pounds.

Increases in southbound rates range from 15 to 25 percent. Sugar shipped from Puerto Rico exceeds 800,000 tons per year, and moves at a contract rate of 14.5 cents, the noncontract rate being 15 cents. The rate on refined sugar is 15.75 cents. The volume from Cuba exceeds 1,750,000 tons annually and is shipped in chartered vessels. Respondents Ocean Dominion Steamship Corporation and American Caribbean Line participate in this movement. Early in 1937 the rate on Cuban sugar was as high as 28 cents, but more recently fixtures have been made at 20 cents. The rate stated to apply from main ports in Venezuela served by American Caribbean, is approximately 24.5 cents, but the distances are greater than from ports in the islands mentioned.

Loading facilities at Puerto Rican ports permit vessels to load with despatch. At docks in San Juan it is not uncommon to load 4,600 tons per day. At Fajarda, a principal sugar outport, from 750 to 850 tons may be loaded from lighters. At St. Croix ports where sugar is lightered to the vessel, carriers have never loaded 1,000 tons in less than 1½ days and frequently it has taken 3½ days. However, loading conditions at the respective ports are now not materially different from conditions which existed at the time the 16-cent rate was in effect, and in the absence of evidence that despatch in Puerto Rican ports has improved over 1936 or that facilities at St. Croix are now not so favorable as in that year, the difference in loading conditions, of itself, does not warrant an increase in the rate. The 16-cent rate, voluntarily established and maintained for a period of time exceeding two years, was prima facie reasonable, and a 56 percent increase therein must be justified.

Respondents rely principally upon increased operating costs. Statements submitted by the Bermuda and West Indies Steamship Company indicate that on a voyage of its S. S. *Nerissa* in April 1937, expense incurred, exclusive of overhead depreciation, or interest on investment, increased 53 percent over similar expenses of a comparable voyage of the same vessel in May 1936. That company also claims that on a shipment of 1,315 tons transported during September-October 1936 via the S. S. *Primo*, then under time charter, a loss of \$125.56 resulted. Revenue on that shipment, after deducting loading and discharging costs, charter hire, cost of fuel, and other expenses while actually loading and discharging, amounted to \$896.23, whereas charter hire, fuel cost, and other expenses incurred while en route from the Virgin Islands to New York, claimed by respondent to be properly chargeable to that cargo, amounted to \$1,021.79. In like manner, a loss of \$1,037.44 is claimed on a shipment of 900 tons of sugar transported at a 25-cent rate on the S. S. *Nerissa* in May 1937. The vessels served regular itinerary ports beyond St.

Croix, and since expense incident to the vessels' return to New York would have accrued in any event, it may be that other cargo should bear a greater proportion of that expense than has been allocated thereto. In fact, the revenue obtained from this shipment may have decreased the loss that would have otherwise resulted.

Time charter rates paid by the American Caribbean Line, Inc., on comparable vessels operated on regular itineraries during 1936 and 1937 reflect increases exceeding 100 percent per deadweight ton and approximately 83 percent in per day charter cost. Increased cost of fuel per day was 26 percent, and total operating costs show an average per-day increase of 63 percent in 1937 over 1936. Voyages completed in 1937 of vessels operated on bare-boat charter basis, show an increase in per day cost of approximately 30 percent over a comparable period in 1936.

The American Caribbean Line stated if it handled sugar from St. Croix, it would have to shut out something else in the lower islands which usually pays a much higher rate. In May 1937, that line transported a 1,349-ton shipment for Virgin Islands Company to Philadelphia, Pa. No space was available on vessels regularly operated northbound, and the S. S. *Thyra*, a vessel of 2,300 tons deadweight, was diverted from a Gulf port to handle the shipment. No other cargo was transported, and a loss of \$2,412.12 resulted. It was admitted that this was perhaps an isolated instance. Under the circumstances, a loss could hardly have been avoided. In view of the limited tonnage available generally at Virgin Islands ports, respondent unquestionably contemplated that its service from such ports would be via vessels operating on its regular route. That a loss resulted in this instance is not convincing that a loss would be incurred in the future on such vessels. The publication and filing of a tariff imposes an obligation upon a carrier to serve the ports or places named therein, and a refusal to book cargo, if at the time space is available, for the sole reason that more profitable bookings are available elsewhere, is not sanctioned by the Shipping Acts.

An exhibit of the American Caribbean Line purporting to reflect the major commodity movement northbound to New York shows that during the first 6 months of 1937, 5,460 tons of cargo was transported. That exhibit did not include bauxite, a mineral used in the manufacture of aluminum, which it was stated moved in quantities of approximately 2,500 tons a month. Apparently bauxite is the principal commodity transported by the American Caribbean Line. It should, therefore, bear a substantial part of the increased operating cost. Neither the rate charged on bauxite nor the manner in which that commodity bears its share of increased operating cost was shown.

It must be recognized that operating 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. Apart from the increase on Virgin Islands sugar, there has been no increase in any rate in excess of $33\frac{1}{3}$ percent, and increases have been imposed upon only 4 of the 15 commodities transported northbound during the period January 1 to June 30, 1937. Respondents state that competitive rates on cocoa beans and molasses prevented a larger percentage of increase on those commodities. The rate table herein set forth discloses that respondents' rates on those commodities are not out of line with those charged from the majority of the competitive points shown. The low rate on molasses from San Juan may be accounted for by the fact that ordinarily the movement is in tankers. Regarding sugar, respondents show a similar competitive situation, but their 25-cent rate is materially higher than that charged from the majority of the competitive points. The record contains no satisfactory explanation why other northbound commodities have not contributed to the increased cost of operation. The increase in the rate on sugar, the only commodity moving in volume from the Virgin Islands, is $22\frac{2}{3}$ percent higher than the increase on any other commodity. It is not shown that cost incurred in serving the Virgin Islands is greater in proportion to that incurred at other ports served. A 56 percent increase in the rate on sugar has not been justified and the increased rate is unjust and unreasonable. Under the circumstances shown, in the absence of a general rate adjustment on all northbound traffic, a reasonable maximum rate for future application should not exceed an advance of $33\frac{1}{3}$ percent above the rate in effect prior to April 1937.

The Virgin Islands Company contends that the maintenance of a lower rate from Puerto Rico than from the Virgin Islands is unduly prejudicial to it and other shippers, in violation of section 16 of the Shipping Act, 1916. However, respondents American Caribbean Line, Inc., and Bermuda and West Indies Steamship Company, Ltd., the only carriers now transporting sugar from the Virgin Islands, do not operate in the Puerto Rican trade and there is no evidence that they control the rates from Puerto Rico. While, as stated, the Ocean Dominion Steamship Corporation and American Caribbean Line carry sugar from Cuba, transportation conditions in that trade are different from those existing in the Virgin Islands trade. Consequently, there is no basis for a finding of undue prejudice.

The Ocean Dominion Steamship Corporation has of record section 18 tariffs which name rates for transportation between the

Virgin Islands and the United States, in which service it does not engage. The tariff of the American Caribbean Line, Inc., names rates for transportation from St. Thomas and St. Croix, V. I., to New York, N. Y., and Norfolk, Va. It has been shown that this carrier transported a quantity of sugar from St. Croix to Philadelphia, Pa., a port not named in its tariff. In addition, its tariff contains no rules or regulations governing the application of the rates or the conditions under which service will be accorded. Section 18 of the Shipping Act, 1916, contemplates that tariffs filed pursuant thereto shall serve as information to shippers and others interested regarding available all-water routes between interstate ports as well as rates or charges for or in connection with transportation over such routes. Tariffs naming rates for service which does not exist are meaningless and the filing thereof amounts to false representation contrary to the letter and spirit of the law. *Intercoastal Schedules of Hammond Shipping Company, Ltd.*, 1 U. S. S. B. B. 606.

We find that the rate complained of is unjust and unreasonable to the extent it exceeds a rate of 21 cents, but that it is not unduly preferential or prejudicial. We further find that tariffs of Ocean Dominion Steamship Corporation, Ltd., should be canceled and that the tariff of American Caribbean Line, Ltd., covering northbound transportation should be amended in accordance with the views expressed herein. An appropriate order will be entered.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 19th day of January A. D. 1938

No. 444

IN THE MATTER OF RATES, CHARGES, REGULATIONS, AND PRACTICES OF CARRIERS ENGAGED IN TRANSPORTATION OF SUGAR FROM VIRGIN ISLANDS TO THE UNITED STATES

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, The Bermuda and West Indies Steamship Company and American Caribbean Line, Inc., be, and they are hereby, notified and required to cease and desist, on or before March 15, 1938, and thereafter to abstain from publishing, demanding, or collecting for the transportation of raw sugar from the Virgin Islands to the United States a rate which exceeds that prescribed in the next succeeding paragraph hereof;

It is further ordered, That said respondents be, and they are hereby, notified and required to establish, on or before March 15, 1938, by filing and posting in accordance with Section 18 of the Shipping Act, 1916, and thereafter to maintain and apply to the transportation of raw sugar from the Virgin Islands to the United States a rate which shall not exceed 21 cents per 100 pounds; and

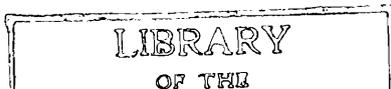
It is further ordered, That, on or before March 15, 1938, the tariff of respondent American Caribbean Line, Inc., be amended to conform with the views expressed herein, and that the tariffs of respondent Ocean Dominion Steamship Corporation be canceled.

By the Commission.

[SEAL]

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

Secretary.



UNITED STATES MARITIME COMMISSION

No. 446

PORT OF PHILADELPHIA OCEAN TRAFFIC BUREAU

v.

THE PHILADELPHIA PIERS, INC., ET AL.

Submitted January 5, 1938. Decided January 19, 1938

Wharfage charges at Philadelphia, Pa., piers on export and import freight not transported by railroad, found not unduly prejudicial to foreign commerce or to the Port of Philadelphia or otherwise unlawful. Complaint dismissed.

John F. Lent for complainant.

Windsor F. Cousins, H. Merle Mulloy, Charles R. Webber, Howard Burtt, and William A. Schnader for defendants.

D. Scrivanich, Harold S. Shertz, E. S. Gubernator, R. J. Mahon, C. R. MacCarey, H. W. Stalberg, Philip F. Newman, and Alfred H. Caterson for interveners.

G. Coe Farrier and Edmund W. Kirby as amici curiae.

REPORT OF THE COMMISSION

BY THE COMMISSION :

Exceptions to the examiner's proposed report were filed by complainant and defendants, and defendants replied. The case was orally argued. Our findings are those recommended by the examiner.

By complaint filed May 13, 1937, as amended, complainant, Port of Philadelphia Ocean Traffic Bureau, a corporation formed to promote the commerce of the Port of Philadelphia, Pa., alleges that a wharfage charge of 50 cents per ton established by defendants on May 10, 1937, applicable to all import and export freight handled over defendants' piers at Philadelphia, not transported by railroad, subjects such freight to undue prejudice and disadvantage and the collection of the charge constitutes unjust and unreasonable regulations and practices in violation of sections 16 and 17, respectively of the Shipping Act,

1916. It is further alleged that the assailed regulations and practices are detrimental to the Port of Philadelphia in violation of section 8 of the Merchant Marine Act, 1920. Reparation on behalf of importers and exporters is sought. Defendants are The Philadelphia Piers, Inc., which operates piers owned by the United States under a lease from this Commission, and the Baltimore & Ohio Railroad Company, the Pennsylvania Railroad Company, and Reading Company, owners or operators of railroad piers.

D. Scrivanich & Company and Pennsylvania Motor Truck Association, Inc., intervened at the hearing in support of the complainant. Pennsylvania-Dixie Cement Corporation, Lone Star Cement Corporation, Hercules Cement Corporation, Nazareth Cement Company, and Lehigh Portland Cement Company, intervened in support of defendants without contesting our jurisdiction. William S. Scull Company intervened to oppose our jurisdiction. G. Coe Farrier, Navigation Commissioner of the Delaware River, a State officer, appeared for the same purpose.

Prior to December 1936 export and import freight moved over the defendants' piers free of any wharfage charges. At that time the railroad defendants issued tariffs to become effective February 1, 1937, naming wharfage charges and filed them with the Interstate Commerce Commission and the Pennsylvania Public Utility Commission. This led to protest before the Interstate Commerce Commission, followed by voluntary cancellation of the tariff, and litigation in the Pennsylvania courts, the Director of Wharves, Docks and Ferries of Philadelphia claiming jurisdiction. Because of this litigation, defendants reserve the point of jurisdiction. Defendants, to the extent they own or operate wharves and piers in connection with interstate or foreign water-borne commerce wholly exclusive of rail transportation, are "other persons" subject to the act as defined in section 1 thereof.

The wharfage charges in issue are for "top wharfage" described in Pennsylvania Railroad notice, dated May 6, 1937, as follows:

On import and export freight placed on this pier on or after the effective date of this notice, a top wharfage charge of 2.5 cents per 100 pounds will be assessed when such freight is transported to or from the pier otherwise than in railroad service.

The minimum charge will be 50 cents per shipment. The freight delivered to the pier by one shipper or received from the pier by one consignee in any one day will be considered a single shipment for the purpose of applying the minimum top wharfage charge.

The provisions of this notice are effective beginning May 10, 1937, at 12:01 a. m.

Such notices were posted at defendants' piers on or about May 6, 1937. The act does not require operators of piers and wharves to file their rates and schedules with us, nor is there any statutory requirement governing the time of notice of their charges.

Complainant's testimony consists largely of a history of the assailed charges, description of the location and facilities of defendants' wharves, as well as all the other wharves and port facilities of Philadelphia, a review of the volume and kind of commodities moving in and out of the port for a period of years, and a summary of the steamship lines serving the port. It is testified that the Port of Philadelphia covers 38 miles on the west side of Delaware River and on both sides of the Schuylkill River, within which are 224 piers, wharves and bulkheads, with a total berthing capacity of about 196,000 lineal feet. The ownership of these docking facilities is said to be as follows: The city owns 40, including 9 at Hog Island; the United States owns 25, including 17 at the Navy Yard; railroads own or control 62; and 97 are privately owned or operated. About half of the piers are served by railroad facilities. The municipal piers make a wharfage charge of 10 cents per ton as well as a dockage charge. With the exception of Philadelphia Piers, Inc., defendants do not maintain dockage charges against vessels using their facilities and no wharfage is collected by defendants on coastwise and intercoastal traffic. The record indicates that steamship lines in foreign commerce do not pay defendants for wharfage and that their rates for transportation do not include terminal service, such as wharfage. According to reports made by certain steamship companies to complainant, about 72,056 tons of freight were charged the assailed wharfage rate by defendants between May 10 and August 1, 1937.

Complainants' case rests largely on the assertion that the assailed charges will drive import and export business away from Philadelphia in favor of competing ports, particularly New York, N. Y. A large importer of wool who is president of the Philadelphia Wool and Textile Association, testified that he has advised shippers at world ports to route shipments to Philadelphia through New York to save the wharfage charge if the transportation rate is not greater. He did not know the rate on wool from New York to Philadelphia. Witness for the S. S. White Dental Manufacturing Company, exporters from New York and Philadelphia, asserts that the wharfage charge causes shipments from Philadelphia to move through New York for export. However, the cost of transportation from Philadelphia to New York is admittedly higher than the cheapest available transportation from this company's plant in Philadelphia to the piers there plus wharfage charges. A steamship agent states that he has been advised by three companies, one in Trenton, N. J., and two in Philadelphia, that they will not use Philadelphia because of the wharfage charge. An importer of cement was obliged to cancel contracts and testified that he is exporting second-hand automobiles from Philadelphia through New York to avoid wharfage. This evidence is not persuasive that

the charges in issue result in appreciable diversion of traffic to the prejudice of the port of Philadelphia or to importers or exporters there.

The charges are further assailed on the ground that they discriminate between shippers by rail and those using other forms of transportation. This contention overlooks the fact that the rail rates include compensation for use of terminal facilities. General testimony to the effect that wharfage charges are a burden on foreign commerce is not proof of their unlawfulness. Neither does the fact that wharfage is charged on foreign and not on domestic freight constitute undue prejudice to the former in the absence of a showing of a competitive relation and an injurious effect on the traffic prejudiced and advantage to the traffic preferred. No such showing is made on this record.

Defendants maintain they are entitled to compensation for the use of their private piers and show that the average cost per ton of freight handled over their piers is 57 cents. They stress the fact that the wharves are specially built for railroad service, and have depressed tracks and other facilities not adaptable for truck use. In recent years the volume of motor vehicle transportation has increased to such an extent that about 60 percent of all freight handled over defendants' wharves moves by truck, causing congestion and interference to railroad operation, and necessitating increased policing of traffic on wharves. Defendants call attention to the fact that similar wharfage charges are in effect at other ports, such as Boston, Mass., and Baltimore, Md. The evidence as to wharfage charges at the port of New York is conflicting, but it is clear that the Pennsylvania maintains a wharfage charge of 5 cents per 100 pounds at its Jersey City pier on import and export freight transported otherwise than in rail service. None of the other defendants handles foreign shipments at New York.

We find that defendants' wharfage charges have not been shown to be unduly prejudicial, that the practice of making the charge is not unreasonable, and that the charges and practice assailed are not detrimental to the Port of Philadelphia. 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 19th day of January, A. D. 1938

No. 446

PORT OF PHILADELPHIA OCEAN TRAFFIC BUREAU

v.

THE PHILADELPHIA PIERS, INC., 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. 437¹

BUXTON LINES, INCORPORATED

v.

NORFOLK TIDEWATER TERMINALS, INCORPORATED, ET AL.

Submitted January 5, 1938. Decided January 19, 1938

Pier usage and handling charges at Port of Hampton Roads, Va., and regulations and practices in connection therewith not shown to be unduly prejudicial. Regulations and practices not shown to be unjust or unreasonable. Complaints dismissed.

Gerould M. Rumble and Francis S. Thompson for complainant in No. 437; *Edgar Watkins, Jr.*, and *J. C. Weaver* for complainant in No. 442.

Charles J. Kaufman, W. N. McGehee, L. L. Oliver, and W. T. Turner for defendants.

Edgar Watkins, Jr., for Transportation Corporation of Virginia, L. H. Bottoms Truck Line, Carolina-Norfolk Truck Line, D. D. Jones Transfer and Warehouse Company, Old Dominion Freight Line and Hampton Roads Transportation Company; *W. B. Jester* for Virginia-Carolina Peanut Association; *John F. Lent* for Port of Philadelphia Ocean Traffic Bureau; *D. Lynch Younger* for Norfolk & Western Railway Company; *M. Carter Hall* and *R. T. Wilson, Jr.* for Chesapeake & Ohio Railway Company and Virginian Railway Company; *Windsor F. Cousins* for Pennsylvania Railroad Company; *L. P. King* for Seaboard Air Line Railway Company; *John W. Oast, Jr.* for Norfolk, Baltimore & Carolina Line, Inc., interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's report were filed by complainants and by defendant Southern Railway Company, and the cases were

¹This report also embraces No. 442, Hampton Roads Transportation Company v. Norfolk Tidewater Terminals, Inc., et al.

orally argued. The findings recommended by the examiner are adopted herein. The two cases involve similar issues, were heard together, and will be disposed of in one report. Defendants² in both cases are the same except that Southgate Norfolk Pier, Incorporated, is not a defendant in No. 442.

Complainant in No. 437 is a common carrier by water operating between the Port of Hampton Roads, Virginia, and James River points in Virginia. Complainant in No. 442 is an interstate common carrier of property by motor vehicle. Defendants are engaged at the Port of Hampton Roads in the business of furnishing wharfage and other terminal facilities for traffic transported by railroad, river, canal, highway, and ocean carriers. Norfolk Tidewater Terminals, Inc., and Lambert's Point Terminal Corporation are agents for railroads serving Hampton Roads ports as respects rail traffic interchanged with ocean carriers over these defendants' terminals. The charges, regulations, and practices assailed relate to the transportation of traffic by water carriers subject to the Shipping Act, 1916, as amended, and are not in connection with traffic moving over joint water-and-truck routes.

Each defendant, except Southern Railway Company, admits that it is an "other person" as defined by Section 1 of the Shipping Act, 1916, and subject to regulatory provisions of that Act, as amended. Defendant Southern Railway Company contends that its terminal facilities are subject solely to the jurisdiction of the Interstate Commerce Commission. Section 1, paragraph 3, of the Interstate Commerce Act defines the term "railroad" to include, among other things, all terminals and terminal facilities of every kind used or necessary in the transportation of property designated in such Act. Defendant urges that Section 33 of the Shipping Act, 1916, which prohibits construction of any provision of the Shipping Act to affect the power or jurisdiction of the Interstate Commerce Commission, removes any basis upon which our jurisdiction might rest. Apart from providing terminal facilities for its rail traffic, defendant Southern Railway Company is engaged in the business of furnishing wharfage and other terminal facilities in connection with common carriers by water subject to the Shipping Act, 1916, as amended, on traffic transported exclusively by water or by water and truck. Defendant's business in relation to the latter traffic is separable from its function as a rail carrier, and in our view is not a matter as to which the mandate of Section 33 of the Shipping Act, 1916, is applicable.

Complainants allege that defendants' charges, regulations, and practices for and in connection with services incident to interchange

² Norfolk Tidewater Terminals, Inc., Lambert's Point Terminal Corporation, Southern Railway Company, Southgate Norfolk Pier, Inc.

of interstate and foreign traffic between their boats and trucks on the one hand and ocean carriers on the other subject them to undue prejudice in violation of Section 16 of the Shipping Act, 1916, as amended; and that said regulations and practices are unjust and unreasonable in violation of Section 17 of that statute. Prior notice by defendants of the changes in the assailed charges, regulations, and practices effective April 1, 1937, is indicated to have been furnished complainants and all others interested in such changes. Without passing here upon the adequacy of such notice, we desire to make the observation that ample notice should be given of rate changes by "other persons" subject to the Act. Charges will be stated in cents per 100 pounds.

The grievance of both complainants is that on certain rail-borne freight interchanged with ocean carriers over defendants' piers the defendants' charge for pier usage and for unloading out of or loading into railroad car is 1 cent, while on complainants' respective freights interchanged with ocean carriers the defendants exact higher charges for alleged less or comparable service; further, that longer free-time periods are accorded rail freight than are allowed complainants' freights. Additionally complaint is made in No. 442 that defendants' charge for service on its truck traffic is greater than their charge for service rendered in connection with river traffic of complainant in No. 437, and that defendants in effect refuse it the privilege of unloading and loading its trucks to reduce the amount of such charge.

Defendants' charges on rail traffic vary from 1 cent to 5 cents, depending upon the rail point of origin or destination and the nature of the freight. The charge is designed to compensate defendants for use of the pier, handling, and checking the freight, for responsibility for the freight while in defendants' custody, and for proportionate share of cost of upkeep of terminal property and of administration and supervision. The rail freight as to which the 1 cent charge applies originates at or moves to points on the Virginian Railway and Norfolk & Western Railway. It comprises less than 1 percent of the total tonnage of rail-borne freight interchanged with ocean carriers over defendants' piers. Such total tonnage greatly exceeds the tonnage of boat and truck traffic so interchanged.

On all freight received from or delivered to complainant Buxton Lines' boats, and boats of all other river and canal carriers, defendants assess a charge of 2 cents. The service for which this charge is exacted does not include unloading or loading the boat. Otherwise defendants' service and expense in connection with this boat traffic are in nature the same as those on rail traffic. On all freight received from or delivered to complainant Hampton Roads Transpor-

tation Company, and all other truck carriers, defendants assess a charge of 3.5 cents for pier usage and truck unloading or loading.

The service and expense involved are in nature the same as those on rail traffic. This charge of 3.5 cents applies whether or not defendants unload or load the truck. Accordingly, practically all of such handling is performed by defendants.

On behalf of complainant in No. 442, testimony of the Virginia-Carolina Peanut Association is that on shipments of peanuts by rail from Suffolk, Virginia, interchanged to ocean lines over defendants' piers, defendants' applicable charge is 1 cent, as compared with the charge of 3.5 cents which the association's members pay on their truck-borne shipments of that commodity from the same point of origin; further, that the higher charge is applied to its members' truck shipments notwithstanding the desire of such members to perform the truck unloading and thereby reduce the amount of such charge. The applicable rail rate plus defendants' 1 cent charge is 10.5 cents per 100 pounds. The association's members transport their shipments in their own trucks, and by unregulated contract motor carriers at privately negotiated rates. The highest of the contract truck rates referred to is 6 cents per 100 pounds, which, with defendants' charge, equals 9.5 cents. The association's witness affirms the superiority of the contract truck transportation of peanuts over any rail transportation thereof, in that trucks are available at all times for loading at the Suffolk plants, and the truck time of two hours to Norfolk is considerably less than the time required for rail transportation. No showing is made that competitors of the association's members use the rail transportation concerned, or that complainant Hampton Roads Transportation Company carries any of such members' shipments.

An exporter of logs testified that defendants' 3.5 cent charge on truck traffic resulted in loss of a contract of sale of logs in France, and caused diminished profits on other sales made by the witness. No showing is made that the logs of competitors of the witness ever moved or now move by rail to defendants' piers. Complainant Hampton Roads Transportation Company has never carried any of witness' shipments.

A witness for the Transportation Corporation of Virginia, a truck carrier, testified that defendants' 3.5 cent charge for truck unloading and pier usage has caused it to lose to rail carriers the transportation of export cigarettes from Winston-Salem, North Carolina, to the Port of Hampton Roads. Defendants' charge for car unloading and pier usage on export cigarettes from Winston-Salem when received from rail carrier is 3.5 cents.

Defendant Norfolk Tidewater Terminals leases the terminals it operates from the United States of America through this Commission. Complainant in No. 442 alleges breach by this defendant of its lease³ in that at several terminals in Norfolk no truck loading or unloading charge is assessed. Defendant's breach of lease, if any, is not determinative of the issues in No. 442. Whether complainant uses the several terminals indicated, whether complainant's competitors do so, the manner of handling truck traffic at these terminals, and other details pertinent to such issues are not disclosed.

Defendants testify that, unlike rail freight in many instances, boat freight must be checked by the piece. In the case of many carload-lot commodities, a checker is estimated to check from five to ten times more rail than boat freight in a like period of time. On much bulk carload freight, such as wood pulp, no checking is required. Boat freight remains on defendants' piers a substantially longer time than rail freight, and defendants' responsibility for the former is accordingly greater. Unloading and loading of the boats of complainant Buxton Lines and other small vessel carriers is materially different from the unloading or loading of railroad cars. It involves a stevedoring rather than an ordinary handling operation, and the record indicates that it would be undesirable and impracticable for defendants to perform such service.

The average weight of freight discharged from or loaded into a truck is from 2½ to 3 tons, as compared with the average weight of freight discharged from or loaded into a railroad car or from 25 to 30 tons. Unloading or loading this greater volume of rail freight is a continuous and direct operation, as contrasted with the multiple operations for a similar amount of truck freight. Truck arrivals at defendants' piers are at all hours of the day and night, without notice to or control by defendants. This frequently necessitates rearrangement of defendants' gang schedules and the calling of workmen to whom 4 hours of wages must be guaranteed. No similar situation in this regard is shown as respects rail or boat traffic. More checking is required in connection with truck traffic than in relation to rail traffic. Pier wear and damage incident to truck traffic is greater than in connection with rail or boat traffic. Claims for damage to cargo are attributed to truck movements on piers. Defendants' men unload or load a truck in from 30 minutes to one hour. Prior to April 1, 1937, when defendants' charge on truck traffic was 1 cent and the truck driver or driver and helper performed the unloading and loading, this

³ Article V, providing that "in all cases the rates for berthage, dockage and wharfage shall conform with rates charged for similar services at other docks, wharves or water terminals in the harbor of Norfolk."

1 U. S. M. C.

handling time was from 2 hours to 3 hours. Unloading and loading by truckmen resulted in confusion and congestion on the piers, and impeded terminal operations. Since the date referred to, the number of claims for damage to pier cargo has decreased. Defendant Southern Railway Company does not permit trucks on its piers. Truck freight is received or delivered by this defendant on platform at inshore end of pier and conveyed by it between platform and shipside location, an average distance of 400 feet.

By the tariffs of the rail carriers serving the Port of Hampton Roads, free-time allowances on traffic interchanged in the port between them and ocean lines vary from 2 to 15 days, dependent upon origin or destination of the traffic. In most instances these free-time allowances are either 5 days or 7 days. All such allowances are fixed by the railroads in relation to competitive free-time conditions at North Atlantic ports. Rail traffic is switched by the railroads between their yards and defendants' piers upon defendants' orders and at defendants' convenience. As defendants thus have control of the time such traffic shall remain on their piers, no necessity exists for prescription by them of free-time allowance periods on that traffic. The actual time rail freight occupies their piers is frequently less than 1 day. On boat and truck traffic defendants have fixed a period of 5 days, exclusive of Sundays and holidays, during which such traffic is allowed to remain on their piers before storage charges are assessed. Whereas 48 hours is testified to be adequate for purposes of interchange, both boat and truck traffic use the greater portion of the 5 days' free time.

The circumstances and conditions attending defendants' terminal services on the rail, boat, and truck traffic concerned in these cases are substantially dissimilar. This dissimilarity warrants corresponding dissimilarity of charge, regulation, and practice. Complainants do not show that defendants' different charges, regulations, and practices assailed fail fairly to correspond to the different circumstances and conditions involved, or that defendants' regulations and practices in question are not appropriate and justified.

We find that defendants' charges, regulations, and practices have not been shown to subject complainants to undue prejudice in violation of Section 16 of the Shipping Act, 1916, as amended, and that defendants' regulations and practices have not been shown to be unjust or unreasonable in violation of Section 17 of that Act. 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 19th day of January A. D. 1938

No. 437

BUXTON LINES, INCORPORATED

v.

NORFOLK TIDEWATER TERMINALS, INCORPORATED, ET AL.

No. 442

HAMPTON ROADS TRANSPORTATION COMPANY

v.

NORFOLK TIDEWATER TERMINALS, INCORPORATED, 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. 414¹

COMMONWEALTH OF MASSACHUSETTS AND BOSTON PORT AUTHORITY

v.

COLOMBIAN STEAMSHIP COMPANY, INC., ET AL.

Submitted September 13, 1937. Decided January 20, 1938

Defendants' rates on green coffee in bags from ports in Colombia, South America, to New York, N. Y., and Boston, Mass., found to be unduly preferential and prejudicial and unjustly discriminatory.

Defendants found to be operating under unapproved agreements for the transportation of green coffee in bags from ports in Colombia, South America, to New York, N. Y., and Boston, Mass., which are unduly preferential and prejudicial, unjustly discriminatory, unfair, and detrimental to the commerce of the United States to the extent that they make provision for the rates herein condemned.

Pooling agreement between members of the East Coast Colombian Steamship Lines Conference and O. S. K. Line found to be inoperative and ordered canceled.

Addendum to Association of West Coast Steamship Companies agreement disapproved as unjustly discriminatory, unfair, and detrimental to the commerce of the United States. Modification of the agreement approved.

Johnston B. Campbell, Richard Parkhurst, Walter W. McCoubrey, Paul A. Dever, Maurice M. Goldman, and Raymond E. Sullivan for complainants and protestants.

Frank S. Davis, John J. Halloran, Samuel Silverman, Walter W. Ahrens, H. J. Wagner, S. H. Williams, and R. H. Horton for various interveners.

Roscoe H. Hupper, Burton H. White, and Kurt Lindenberg for certain defendants.

¹This report also embraces No. 94, Boston Port Authority v. Colombian Steamship Company, Inc., et al.; No. 183, Commonwealth of Massachusetts v. Same, and No. 422, In the Matter of Modification of and Addendum to Association of West Coast Steamship Companies Conference Agreement.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed to the report proposed by the examiner, and the cases were orally argued. Our conclusions differ in some respects from those recommended by the examiner.

Complainants in Nos. 94, 183, and 414 are protestants in No. 422, and defendants² in No. 414 include all defendants in Nos. 94 and 183 and applicants for approval of the modification and addendum in No. 422. The Maritime Association of the Boston Chamber of Commerce, Foreign Commerce Club of Boston, Inc., Boston Coffee Brokers Association, Dwinell-Wright Company, Economy Grocery Stores Corporation, Stanley W. Ferguson, Inc., Port of Philadelphia Ocean Traffic Bureau, Norfolk Port-Traffic Commission, Joint Executive Transportation Committee of Philadelphia Commercial Organizations, and the Port of New York Authority intervened.

Colombian Steamship Company, Inc., Panama Mail Steamship Company, and United Fruit Company comprise the membership of the East Coast Colombian Steamship Lines Conference, hereinafter called the East Coast Conference, which functions in the trade from Puerto Colombia and Cartagena, Colombia, South America, to United States North Atlantic ports. The remaining defendants, except Osaka Shosen Kabushiki Kaisha, hereinafter called O. S. K., Canadian Government Merchant Marine, Ltd., and Montreal Australia New Zealand Line, Ltd., hereinafter called the Manz Line, constitute the Association of West Coast Steamship Companies. This association, hereinafter called the West Coast Conference, functions in the trades from Pacific ports of Colombia to Atlantic, Gulf, and Pacific ports of the United States, and other destinations. Agreements of the members of these conferences have been filed and approved under section 15 of the Shipping Act, 1916.

Complainants allege that in addition to the approved conference agreements, there are other agreements or arrangements between defendants which have not been filed and approved; that defendants, pursuant to agreement, maintain contract rates on green coffee, in bags, from Colombian ports to Boston, Mass., which are \$2.00 per net

² Colombian Steamship Co., Inc., Panama Mail Steamship Co. (Grace Line), United Fruit Co., Canadian Government Merchant Marine, Ltd. (Canadian National Steamships), Osaka Shosen Kabushiki Kaisha (O. S. K. Line), Montreal Australia New Zealand Line, Ltd., Grace Line, Inc. (Grace Line), Compania Chilena de Navegacion Interoceanica (Chilean North American Line), Compagnie Generale Transatlantique (French Line), Deutsche Dampfschiffahrts-Gesellschaft Kosmos (Kosmos Line), Elliot Shipping & Land Co., Inc. (Elliot Line), Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft (Hamburg-American Line), Norddeutscher Lloyd (North German Lloyd), Pacific Steam Navigation Co., and Koninklijke Nederlandsche Stoomboot Maatschappij (Royal Netherlands Steamship Co.).

ton higher than those which they maintain on coffee from the same ports to New York, N. Y.; that said rates are unduly preferential and prejudicial and unjustly discriminatory, in violation of sections 16 and 17 of the Shipping Act, 1916; and that the agreements are unjustly discriminatory and unfair and operate to the detriment of the commerce of the United States. We are asked to require the defendants to remove the discrimination alleged. Except as otherwise specified, rates will be stated in amounts per net ton. Rates of the East Coast Conference are \$9 to New York and \$11 to Boston. Those of the West Coast Conference are \$11 to New York and \$13 to Boston.

New York has the direct service of East Coast Conference members from Puerto Colombia and Cartagena, hereinafter referred to as East Coast ports, and the direct service of Grace Line, Inc., from the Pacific Coast of Colombia, hereinafter called the West Coast. Also Grace Line, Inc., and other members of the West Coast Conference serve New York from the West Coast by transshipment to members of the East Coast Conference at Cristobal, C. Z., pursuant to arrangements made for through carriage.

Boston has no direct service from Colombia. In the latter part of 1931 and early 1932, vessels of the Canadian Government Merchant Marine, Ltd., lifted coffee at Buenaventura for Boston, as well as New York, but some time during 1932 discontinued loading at that port. Likewise, vessels of O. S. K., prior to June 1936, called at Puerto Colombia and took on coffee for both Boston and New York, but since then such service has not been operated. O. S. K. and the Manz Line, successor to the Canadian Government Merchant Marine, Ltd., now participate in the transportation of Colombian coffee as on-carriers from Cristobal, where vessels of the latter en route from Australia and New Zealand and vessels of the former en route from China and Japan receive it from conference members pursuant to arrangements made for through carriage to Boston.

On coffee to Boston, transhipped at Cristobal, \$9 of the rate from the East Coast ports and transfer charges at Cristobal are divided equally between the originating and delivering carriers, and the differential of \$2 per ton accrues to the latter. On coffee to Boston from the West Coast, out of \$11 of the rate the originating carrier receives 66 percent or \$7.26 and pays the transfer charges at the Canal, while the delivering carrier receives 34 percent or \$3.74 and the differential of \$2. It is due to the fact that the additional revenue represented by the amount of the differential accrues to the Manz Line and O. S. K. that they carry coffee to Boston. They do not transport coffee to New York because, according to the record, their share of the rates to New York would not be acceptable to them.

Complainants contend that the differential shuts coffee out of Boston which would normally move through that port.

Standard Brands, Inc., and Chase & Sanborn Coffee Company, Boston, import about 30,000 bags³ of Colombian coffee annually, which is distributed to their coffee plants in the immediate vicinity of Boston. They testify that Colombian coffee imported for distribution to interior points moves through New York because of the \$2 differential. Their Brazilian coffee shipped to the interior, on which the rate to Boston is the same as to New York, moves through the former port.

Reid, Murdoch & Company has its principal place of business in Chicago, and a branch at Somerville, Mass. It has no office or plant in New York. This firm imports between 4,000 and 5,000 bags of Colombian coffee through the port of Boston annually. Because of the \$2 differential all Colombian coffee imported for delivery at Chicago is routed through New York. Its representative states that it would be a distinct advantage to the company to be able to import its Chicago coffee through Boston instead of New York because a part of a shipment could then be taken off at Boston and the remainder sent on to Chicago.

Dwinell-Wright Company, whose principal place of business is in Boston, imports about 20,000 bags of Colombian coffee per year, and is in competition with roasters at New York. Unless it sells at the same price as its competitors it does not make the sale. Without the differential, this company's representative states it would be in better position to meet the competition from New York and increase its business. Defendants emphasize the fact that Colombian coffee is used as a blend with Brazilian coffee, on which Boston enjoys a parity of rates with New York, and assert that the differential could not have any considerable effect on the sale of Colombian coffee landed at Boston. According to the record, however, a fraction of a cent per pound of coffee is a vital factor in determining whether there will be a profit or loss.

Stanley W. Ferguson, Inc., Boston, imports approximately 60 percent Brazilian and 40 percent Colombian coffee. It imported about 2,000 bags of Colombian coffee in 1934, and competes principally with New York jobbers. Its president testified that business cannot be done wherever there is a disparity of rates against his company's coffee, and that the differential limits the extent of the firm's jobbing territory.

Economy Grocery Stores Corporation, South Boston, has approximately 453 stores scattered throughout New England. It im-

³ A bag of coffee weighs about 154 pounds.

ports about 18,000 bags of coffee per year, approximately 65 percent of which is Brazilian and 35 percent Colombian. Its competitors receive their coffee through New York. Its comptroller testified that the margin of profit on coffee is exceedingly small, and that it must either absorb the difference in freight rates or lose the business.

Gerard LaCentra, a broker, and president of the Boston Coffee Brokers Association, testified that the \$2 differential limits the distribution of coffee from Boston, and that if there were a parity of rates as between Boston and New York many more shipments of Colombian coffee would move through the former port for the jobbing trade. Testimony of the vice president of C. H. Sprague & Son, Inc., operator of American Republics Line, of the director of the Massachusetts Warehousemen's Association and president of Merchants Warehouse Company, and of the agent at Boston for Dollar Steamship Line is that the differential prevents coffee from entering the port of Boston.

For the first 10 months of 1936 Colombian coffee imported through Boston amounted to 5,872 tons as against 99,803 tons imported through New York. However, Boston imports have steadily increased since 1932, as follows: 1932, 2,787; 1933, 5,639; 1934, 7,582; 1935, 8,485; and first ten months of 1936, 5,872 tons. The record warrants the conclusion that the rate of increase would probably have been higher were it not for the differential in question.

Defendants' position is that the differential is justified by transfer and handling charges at the Canal which on-carriers to New York must absorb because of competitive conditions which do not affect transportation to Boston; and the cost of transporting coffee from New York to Boston which is absorbed by such defendant carriers as land coffee at New York and forward it to Boston. The transfer and handling charges at the Canal exceed \$2.50 per ton and the rate on coffee from New York to Boston is 21 cents per 100 pounds.

There is no transshipment of coffee from the East Coast ports destined to New York. Direct service, especially when more frequent and faster than transshipment service, ordinarily increases the value of the service to the shipper. When Boston had direct service by O. S. K. from Puerto Colombia, the East Coast Conference (which then as now fixed and controlled the rates of O. S. K. as well as its members) established a \$2 differential Boston over New York. It is apparent that defendants' existing alignment in controversy fails adequately to reflect the value of the service from East Coast ports.

On coffee from the West Coast, defendants contend that the lower rate to New York than to Boston is due to "the competitive action of the transshipping lines meeting the direct service." As the direct service referred to is by Grace Line, Inc., that defendant is in the

anomalous position of claiming its transshipment rate is depressed because of its own action. Moreover, the members of the West Coast Conference have the power to initiate and enforce changes in rates applying over direct as well as transshipment routes. Defendants' first ground of defense is untenable.

Boston is a port of call of both O. S. K. and the Manz Line. The fact that carriers serving New York do not call at Boston does not justify requiring those carriers that do call at that port to make a higher charge. While there have been instances where O. S. K. has transshipped at New York Colombian coffee consigned to Boston, a witness in charge of its inward freight department testified that its recent practice has been to transship only in cases of emergency.

We find that the rates assailed are, and for the future will be, unduly preferential and prejudicial and unjustly discriminatory to the extent that they are, and for the future may be, higher to Boston than to New York.

We further find that Colombian coffee transshipped at Cristobal moves over through routes and at joint rates participated in by defendants pursuant to agreements within the purview of section 15 of the Shipping Act, 1916. Copies or memoranda of such agreements have not been filed and approved. Defendants argue that such filing and approval is not necessary inasmuch as the carriers forming the through routes do not compete with each other for the traffic to be moved thereover. They take the position that section 15 was not intended to embrace other than "matters that were really competitive." With this view we do not agree. Copies or memoranda of the agreements in question should have been filed. Therefore all action thereunder results in violation of section 15. To the extent that they make provision for the rates herein condemned they are found to be unduly preferential and prejudicial, unjustly discriminatory, unfair, and detrimental to the commerce of the United States.

On August 4, 1933, when O. S. K. was operating a direct service from Puerto Colombia to the North Atlantic, it entered into an agreement with members of the East Coast Conference under which it would receive a percentage of the earnings of the parties thereto from the coffee carried in the trade, and would cooperate with, and maintain the rates and regulations of the conference. This agreement was approved November 25, 1933, and was supplemented by an agreement approved June 5, 1934. Since vessels of O. S. K. stopped calling at Puerto Colombia the agreement of August 4, 1933, as supplemented, has been inoperative. No objection is made to its cancellation.

There remain for consideration a modification of, and an addendum to, the West Coast Conference agreement, which are the subject of the

proceeding in No. 422. The modification proposes to amend the language of the agreement describing the trades covered thereby and to change the wording of a provision in the agreement for arbitration. No evidence was directed against it, and apparently there is not now any objection to its approval. It will be approved.

The addendum has reference to paragraph 20 of the agreement, which reads, in part, as follows:

20. The Association shall agree as to the naming of Terminal and Post Terminal ports of the United States; also as to the naming of Co-carriers from Cristobal and/or Balboa to United States ports when business is transhipped at these ports, and shall also agree on the division of the through rates and arbitraries together with rules and regulations regarding transshipment charges at Cristobal and/or Balboa. * * *

The terminal ports named in the addendum are New York, on the Atlantic Coast; New Orleans, Galveston, and Houston, on the Gulf Coast; and Los Angeles Harbor and San Francisco, on the Pacific Coast. Boston, Baltimore, and Philadelphia are named as post-terminal ports on the Atlantic Coast, and San Diego, Astoria, Portland, Seattle, and Tacoma, on the Pacific Coast. On clean coffee from Buenaventura, however, San Diego, Portland, Seattle, and Tacoma would be accorded terminal rates. Arbitraries, which would accrue entirely to the delivering carriers, are provided for to the other post-terminal destinations.

The provision for terminal rates on coffee to post-terminal ports on the Pacific Coast is said to be due to direct-line competition from the East Coast of Colombia, coffee being the principal commodity and moving through ports on both the East and West Coasts of that country. In fixing rates to the Gulf, the chief consideration is direct service or the possibility thereof. There is no such service to New Orleans. There was at one time, and in the opinion of one of defendants' witnesses "the possibility of direct service being resumed is fairly active." Owing to this possibility the rate on coffee to New Orleans is no higher than to Galveston or Houston. We cannot say on this record that the establishment or resumption of direct service to Boston is not equally possible. Indeed, defendants assert that the direct service of O. S. K. from Puerto Colombia to Boston has been merely suspended.

The addendum further provides that through-billing arrangements shall be maintained by West Coast Conference members only with such other lines as are listed as recognized co-carriers to the Atlantic, Gulf, and Pacific Coasts of the United States. The purpose of the provision is said to be "to support those lines which have been in the trade and have maintained service during lean times." The effect, however, would be to exclude others entitled to participate in the

traffic. Although it is stated that there are not many other carriers docking at Cristobal and ordinarily interested in the trade, those that are in the trade are entitled to fair treatment.

Furthermore, the addendum would limit co-carriers, other than West Coast Conference members, to particular ports of destination. For instance, O. S. K. would no longer be permitted to participate in the traffic to Boston, being restricted to the ports of Baltimore and Philadelphia. A witness in charge of the inward freight department of O. S. K. asserted that it did not like to be limited to specific ports, that the restriction was not justified, and that O. S. K. would not consent to it. Members of the conference, according to the terms of the addendum, would at all times be recognized as accredited co-carriers to all ports.

There is a further provision that co-carriers shall guarantee that they will accept traffic at Balboa or Cristobal on through bills of lading issued at Colombian Pacific and Ecuadorian ports from member lines of the West Coast Conference only, and that they shall agree to accept traffic from nonconference lines as local cargo only from Canal Zone ports at recognized local tariff rates. To approve this provision would be to sanction control by the conference of traffic moving over routes in which none of its members participates.

We find that the addendum is unjustly discriminatory and unfair as between carriers and ports and, if carried into effect, would operate to the detriment of the commerce of the United States.

An appropriate order will be entered.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 20th day of January, A. D. 1938

No. 94

BOSTON PORT AUTHORITY

v.

COLOMBIAN STEAMSHIP COMPANY, INC., ET AL.

No. 183

COMMONWEALTH OF MASSACHUSETTS

v.

COLOMBIAN STEAMSHIP COMPANY, INC., ET AL.

No. 414

COMMONWEALTH OF MASSACHUSETTS AND BOSTON PORT AUTHORITY

v.

COLOMBIAN STEAMSHIP COMPANY, INC., ET AL.

No. 422

IN THE MATTER OF MODIFICATION OF AND ADDENDUM TO ASSOCIATION OF
WEST COAST STEAMSHIP COMPANIES CONFERENCE AGREEMENT

These cases being at issue upon complaints and answers on file with the Department of Commerce of the United States 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 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 defendants herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before March 25, 1938, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of green coffee in bags from points in Colombia, South America, to Boston, Massachusetts, rates which exceed those on like traffic from the same points of origin to New York, N. Y.;

It is further ordered, That the agreement dated August 4, 1933, and approved November 25, 1933, as Conference Agreement No. 126-3, as supplemented by Conference Agreement No. 126-5, approved June 5, 1934, be, and it is hereby, disapproved and canceled;

It is further ordered, That the modification dated March 18, 1936, of Association of West Coast Steamship Companies Agreement (Agreement No. 3302-1) be, and it is hereby, approved; and

It is further ordered, That the addendum dated March 18, 1936, to Association of West Coast Steamship Companies Agreement (Agreement No. 3302-2) be, and it is hereby, disapproved.

By the Commission.

[SEAL]

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

UNITED STATES MARITIME COMMISSION

No. 102

ARMSTRONG CORK COMPANY ET AL.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

Submitted October 4, 1937. Decided March 4, 1938

Defendants' tariff provision for mixed-carload rates on shipments of floor coverings with roofing and building materials from California ports to ports in Oregon and Washington found unduly prejudicial and unreasonable, and ordered cancelled.

E. G. Siedle and *Frank M. Chandler* for certain complainants and intervener Bird & Son, Inc.

Joseph J. Geary for defendants.

A. W. Brown for intervener The Paraffine Companies, Inc.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainants and an intervener to the examiner's report. Our conclusions differ from those recommended by the examiner.

Complainants¹ alleged by complaint, as amended, that defendants'² tariff provision,³ permitting felt base floor coverings and linoleum floor coverings, described as "Floor Covering, asphalted (printed or not printed)," hereinafter called floor coverings, to be shipped from California ports to ports in the States of Oregon and

¹ Complainants are Armstrong Cork Company, Certain-teed Products Corporation, Congoleum-Nairn, Inc., Delaware Floor Products, Inc., El Rey Products Company, Johns-Manville Corporation, Pioneer Paper Company, Sandura Company, Inc., and Sloane-Biabon Corporation.

² Defendants are American-Hawaiian Steamship Company, Chamberlin Steamship Company, Ltd., Hammond Shipping Company, Christenson-Hammond Line, Luckenbach Steamship Company, Inc., Luckenbach Gulf Steamship Company, Inc., McCormick Steamship Company, Nelson Steamship Company, Pacific Steamship Lines, Ltd., and Williams Steamship Corporation. Nelson and Williams have discontinued operations.

³ Item 1555 of Pacific Coastwise Freight Tariff Bureau Minimum Rate List No. 3.

Washington in mixed carloads with roofing and building materials, hereinafter called building materials, in quantities not exceeding fifteen percent of the total weight of the shipment or of the minimum carload weight when the minimum is greater than the actual weight, at the straight-carload rates applicable on building materials, is unduly preferential and prejudicial, allows transportation of property at less than defendants' regular rates, and is unjust and unreasonable, in violation of sections 16 and 18 of the Shipping Act, 1916. The principal issue, however, is whether the mixed-carload rates, used only by intervenor The Paraffine Companies, Inc., are unduly preferential and prejudicial. Complainants seek an order requiring defendants to withdraw the above-mentioned mixing privilege, and to establish lawful rates, rules, and practices for the future. Rates will be stated in cents per 100 pounds.

Some of the complainants manufacture floor coverings and the others building materials. The Paraffine Companies, Inc., hereinafter referred to as Paraffine, and Bird & Son, Inc., interveners in support of defendants and complainants, respectively, make both lines of products. The plants of Paraffine and complainants manufacturing building materials are in California. Those of complainants manufacturing floor coverings are located on the Atlantic seaboard, whence their products are shipped in carload quantities to warehouses of their own, or to jobbers on the Pacific coast. There they are distributed in less-than-carload lots, chiefly from San Francisco, California, in competition with Paraffine's plant at Emeryville, California, located on the east side of San Francisco Bay, and with each other. A witness for Sloane-Blabon stated that they ship floor covering in less-than-carload lots on practically every vessel leaving San Francisco to Portland and Seattle. Certain-teed has a manufacturing plant at Richmond, Calif. During the four months' period, March through June 1937, that complainant shipped by water 837 tons or 64 carloads of building materials from San Francisco to Portland and Seattle, upon which the freight charges totaled \$4,306.05. The volume shipped by other parties of record is not shown, but it is clear that there is a substantial and regular movement of floor coverings and building materials from San Francisco to Puget Sound and Columbia River ports. Paraffine alone is able to ship building materials and floor coverings in mixed-carload quantities from San Francisco under the assailed mixing provision.

Floor coverings and building materials are merchandized through different retail outlets, are used for different purposes, and are totally different in nature, except that there is a slight similarity in the process of manufacturing the base for felt base floor coverings and asphalt saturated building and roofing paper. The latter is less

susceptible to damage than the former, has a greater weight density, and is lower in value. According to figures of record, floor coverings weigh from 22 to 47 pounds per cubic foot, and have a value of from 10 cents to 20.8 cents per pound, whereas asphalt saturated felt paper weighs 60 pounds per cubic foot and has a value of 2.5 cents per pound. Other roofing and building papers and asphalt shingles weigh 50 pounds per cubic foot and have a value of 2 cents per pound. Wallboard weighs 35 pounds per cubic foot and has a value of 4.5 cents per pound. Floor coverings are rated fourth class, carload, minimum weight 30,000 pounds, and second class, less than carload, in western classification, whereas building materials are rated fifth class, class C and class D, carload, minimum 30,000, 36,000, and 40,000 pounds, and third and fourth class, less than carload.

Commodity rates apply on these materials in carload and less-than-carload quantities from San Francisco to Portland and Seattle. The carload rates on floor covering and building materials from San Francisco to Portland are 35 and 23 cents respectively. The less-than-carload rate on floor coverings from and to the same points is 60 cents. To Seattle they are uniformly 5 cents higher.

The privilege of shipping floor coverings in mixed carloads with building materials at the straight carload rates applicable on the latter is said to have had its origin in tariffs of carriers by water operating between San Francisco and southern California ports to meet unregulated truck competition. Prior to May 22, 1933, there was no limitation either in the tariffs of the intrastate carriers or of defendants on the quantity of floor coverings that might be mixed with building materials. On that date, the Railroad Commission of the State of California decided that intrastate carriers, in order to remove discrimination, should be required to restrict their building materials item so as to include not to exceed fifteen percent of floor coverings at the building materials rate. Defendants in the instant case thereupon put the restricted mixture privilege into effect, as did their railroad competitors.

As heretofore observed, complainants distributing floor coverings from San Francisco ship only in less-than-carload lots. They point out that the mixing provision enables Paraffine to use the weight of floor coverings to make up the required minimum weight for a carload of building materials and thereby secure for the transportation of floor coverings the 23-cent carload rate applicable on building materials from San Francisco to Portland, a lower rate than floor covering competitors can enjoy even if they shipped in carload quantities. They urge that this is in direct contravention of rule 10 of the governing classification which provides for mixed-carload shipments at the straight-carload rate applicable on the highest classed

or rated article contained in the mixed carload and the highest carload minimum weight provided for any article in the carload. They contend that such a rule should be observed if any mixture of these commodities is proper. An examination of the applicable tariff reveals that the specific mixture provision in issue is an exception to the general mixing rule published in the same tariff. The latter provides that when articles named in different rate items in the tariff are shipped in mixed carloads, the rates to be applied shall be the carload rates applicable to each article and the minimum carload weight will be the highest provided for any of the articles in the carload. This rule, which differs materially from Rule 10 of the Classification, would govern if the specific mixture rule in issue were to be cancelled.

Complainants testify that the mixing provision places them at a disadvantage with Paraffine, their competitor. For example, on 4,500 pounds of floor coverings, moving from San Francisco to Portland at the less-than-carload rate of 60 cents, the total transportation charge would be \$27, whereas Paraffine, by mixing that quantity of floor coverings with building materials for the purpose of making a carload of 30,000 pounds, may move the floor coverings at a rate of 23 cents, amounting to \$10.35. This means, according to complainants, that on a rug weighing 37 pounds and valued at \$4.20 at San Francisco, Paraffine realizes a saving through the difference in transportation charge of about 14 cents per rug. The market price at Portland or Seattle is fixed by the trade on a zone basis and therefore the difference in transportation costs must be borne by complainants in the selling of the goods at prices observed by complainants and Paraffine in Oregon and Washington. According to complainants this freight rate saving amounts to added profit either to Paraffine or its distributors. One witness testified that, although no specific instance could be shown, complaints are being received from distributors in Oregon and Washington that Paraffine is underselling the market prices. Whether or not that is true, the rate situation opens the door to that possibility. Complainants shipping floor coverings do not object to paying higher rates on that commodity than those which apply on building materials. They maintain that the mixing provision assailed is without precedent in either coastwise or intercoastal trades and state they would be satisfied with a mixture subject to rule 10 of the classification.

However, complainant Certain-teed, manufacturing building materials at Richmond and shipping from San Francisco to Columbia River ports in competition with Paraffine and other shippers, objects to the mixture on any basis. Its witness states that the mixture of non-analogous and unrelated articles is unique and without

precedent in defendants' tariffs. Although Certain-teed and Paraffine ship building materials at the same rates, the former is required to ship 30,000 pounds whereas Paraffine can load only 25,500 pounds plus 4,500 pounds of higher rated floor coverings at the 23-cent carload rate, and at the same time effect a saving of 37 cents per 100 pounds on the floor coverings, that being the difference between the 60-cent less-than-carload rate on floor coverings and the 23-cent carload rate on building materials, San Francisco to Portland. This saving represents 24 percent of the \$69 freight charge for a carload of building material. Reducing this figure to savings on roofing per carload shipped in this manner this complainant shows that Paraffine saves more than 6.5 cents per hundred pounds on the 25,500 pounds of roofing, thus reducing the transportation cost to 16.5 cents per 100 pounds.

Defendants offered no evidence in defense of the assailed mixture, but they called attention to the fact that competing rail carriers serving Pacific Coast ports, including San Francisco, Portland and Seattle, have a similar provision in effect through fourth section relief authorized by the Interstate Commerce Commission, and maintain that cancellation of the mixed-carload rates in question would place them at a disadvantage in competing for traffic unless their railroad competitors amended their tariffs so as not to reduce the existing differentials. As we understand the order in *Pacific Coast Fourth Section Applications*, 165 I. C. C. 373, as modified, the rail carriers were authorized to establish a rule similar to the one in question to meet water competition. Upon cancellation of the rule by defendants, the rail carriers would undoubtedly be required to take similar action.

Complainants do not ask for a reduction in their rates. They seek merely to have the preference removed under which Paraffine is enabled to ship the same commodities in the same quantities from and to the same points over the same carriers at substantially lower rates. There is no convincing evidence of record that the undue advantage in rates accorded Paraffine is justified when measured by transportation standards. That such advantage in rates results in distinct benefit to Paraffine can not be doubted. It affords that company an opportunity to gain success over and injure its competitors. And when its competitors are charged higher rates on like traffic for service of the same value they are being subjected to undue prejudice. The language of section 16 forbidding "any undue or unreasonable prejudice or disadvantage in any respect whatsoever" is specifically directed against undue preference and every other form of unjust discrimination against the shipping public.

The complaint alleges that the mixing rule and resulting rates constitute a violation of section 18 of the act. No evidence was presented with respect to the reasonableness of individual rates, but there remains for consideration the question of whether the mixing provision is an unreasonable regulation or results in an unreasonable practice. Tariff provisions should be responsive to the requirements of the general public. Complainants and interveners are the major producers of floor coverings and building materials in the United States. The evidence clearly shows that there is no general demand for the assailed tariff provision, one company alone using it. 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, particularly where, as here, the provision was established for the benefit of one shipper and results in rate disparity and disadvantages hereinbefore detailed. Such justification has not been shown.

We find that the assailed mixing provision is, and for the future will be, unduly prejudicial to complainants and unduly preferential of their competitors in violation of section 16 of the Shipping Act, 1916. We further find that the mixing provision constitutes an unjust and unreasonable tariff rule and results in an unreasonable practice in violation of section 18 of that act. An appropriate order will be entered.

1 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 March
A. D. 1938

No. 102

ARMSTRONG CORK COMPANY ET AL.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, CHAMBERLIN STEAMSHIP
COMPANY, LTD., HAMMOND SHIPPING COMPANY, CHRISTENSON-HAM-
MOND LINE, LUCKENBACH STEAMSHIP COMPANY, INC., LUCKENBACH
GULF STEAMSHIP COMPANY, INC., MCCORMICK STEAMSHIP COMPANY,
AND PACIFIC STEAMSHIP LINES, LTD.

This case being at issue upon complaint and answer on file with the United States Shipping Board, 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 and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the above named defendants be, and they are hereby, notified and required to cancel the mixing provision under which defendants permit less than carload quantities of floor coverings to be shipped from California ports to ports in the States of Oregon and Washington in mixed carloads with building materials at the rates applicable on building materials in carloads, effective on or before April 20, 1938, upon not less than 10 days' filing and posting in the manner required by law.

By the Commission

[SEAL]

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

UNITED STATES MARITIME COMMISSION

No. 322

SEGREGATION PRACTICES AND CHARGES OF INTERCOASTAL CARRIERS

No. 459

EASTBOUND INTERCOASTAL SEGREGATION RULES AND CHARGES

Submitted January 24, 1938. Decided March 29, 1938

Common carriers by water not obligated to deliver shipments in parcel lots by sub-marks, or according to kind of commodity, or by size, brand, grade, or other designation. Such delivery is an extraordinary delivery privilege, or facility, granted or allowed in connection with transportation requiring publication in intercoastal tariffs. In respect to westbound shipments, and in connection with eastbound shipments in certain instances, respondents' practices found in violation of their tariff rules.

Practice of certain respondents in making deliveries by kind, size, brand, and grade without charge, while assessing a charge for parcel-lot deliveries by sub-mark was and is unduly preferential and prejudicial.

Provisions of so-called segregation rule for eastbound application published and filed by respondents, other than Shepard Steamship Company, requiring detailed declarations in shipping instructions and bills of lading found ambiguous in respect to sub-marked shipments and susceptible to misinterpretation, but such requirements when applicable alike to all classes of shipments not unlawful.

Assessment of a charge in addition to published transportation rate for piling shipments on carrier's pier according to detailed bill of lading designations when shippers or consignees do not request or receive parcel-lot delivery by sub-marks or by other designations found unreasonable.

Exceptions to the application of the charge on shipments routed to points beyond via a rail or water route delivered to the on-carrier as one lot under one general shipping mark found unduly preferential and prejudicial.

In respect to delivery privileges accorded, rule further found unduly preferential of mixed shipments and unduly prejudicial to straight shipments.

Just and reasonable rule for application to eastbound and westbound transportation recommended in lieu of present rules herein condemned.

Harry S. Brown and *M. G. de Quevedo* for respondents American-Hawaiian Steamship Company; (Arrow Line) Sudden & Christenson; (California-Eastern Line) States Steamship Company; Calmar Steamship Corporation; Dollar Steamship Lines Inc., Ltd.;

(Grace Line) Panama Mail Steamship Company; Luckenbach Gulf Steamship Company, Inc.; Luckenbach Steamship Company, Inc.; McCormick Steamship Company; Weyerhaeuser S. S. Co., Inc.; (Panama Pacific Line) American Line S. S. Corp., The Atlantic Transport Co. of West Virginia; and (Quaker Line) Pacific Atlantic Steamship Company. *Thomas F. Lynch* and *Charles S. Belsterling* for Isthmian Steamship Company. *Otis Shepard*, *E. J. Martin*, and *D. M. Dysart* for Shepard Steamship Company. *Joseph J. Geary* and *E. A. Read* for Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line), and Gulf Pacific Mail Line, Ltd.

L. Z. Whitbeck and *W. E. Aebischer* for The Great Atlantic and Pacific Tea Co.; *Irving F. Lyons* and *L. R. Keith* for California Packing Corporation; *Samuel D. Jones* and *Charles Pascarella* for Francis H. Leggett & Co.; *J. S. Bartley* for The Campbell Soup Co.; *George O. Tong* for Minnesota Valley Canning Company and Blue Mountain Canneries, Inc.; *Joseph A. Tapee* and *L. W. Bernhardt* for Austin, Nichols & Co., Inc.; *M. S. Griffin* for Seeman Brothers, Inc.; *DeWitt C. Reed* for New York Wholesale Grocers' Association; *E. E. Wilson* for General Foods Corporation; *Sanford Peters* for Transportation and Warehousing Service; *Edwin G. Wilcox* and *Irving F. Lyons* for Cannery League of California and Dried Fruit Association of California; *John V. Gregg* for Kings County Packing Co.; *Roland Brierie* for Paul Brierie's Sons; *Emile L. Schoenmehl* for himself; *John Dupuy* for Dupuy Storage & Forwarding Corp.; *Daniel J. Sellen* for Backer & Green; *C. M. Fraering* for Fraering Brokerage Co. Inc.; *W. S. Hickerson, Jr.*, for Hickerson Importing Company.

Charles R. Seal for Baltimore Assn. of Commerce; *H. J. Wagner* for Norfolk Port Traffic Commission; *H. V. C. Wade* for Richmond Chamber of Commerce; *John M. Lent* for Port of Philadelphia Ocean Traffic Bureau; *E. H. Thornton* and *Louis A. Schwartz* for New Orleans Joint Traffic Bureau; *Edwin G. Wilcox* for San Francisco Chamber of Commerce; *T. G. Differding* for Oakland Chamber of Commerce; *C. O. Burgin* for Stockton Port District and Stockton Traffic Bureau; *W. G. Stone* for Sacramento Chamber of Commerce; *John P. Ventre* for Howard Terminal; *J. F. Vizzard* for Drymen's Association of San Francisco.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No. 322 is an investigation into eastbound and westbound segregation practices of intercoastal carriers.

No. 459 is a proceeding initiated by our order entered October 14, 1937, suspending until February 17, 1938, the operation on eastbound

traffic of tariff rules, charges and practices with respect to segregation by carriers, other than Shepard Steamship Company, operating from Pacific to Atlantic and Gulf ports of the United States.

The two cases were heard together at New York, N. Y., New Orleans, La., and San Francisco, Calif. No. 459 will be considered first. The rules involved,¹ which are identical and for convenience referred to hereinafter as Rule 2 (g), Application of Rates, and Rule 54, Segregation Charges, are as follows:

RULE 2 (G), APPLICATION OF RATES

Except as otherwise provided for in this tariff, (1) rates named in this tariff apply only on shipments from one shipper forwarded on one ship, covered by one bill of lading, from one loading terminal at one loading port, consigned to one consignee at one discharging terminal at one discharging port; (2) not more than one arrival notice, one delivery order and one freight bill will be issued to cover each shipment; (3) each freight bill must be paid in full in a single payment by either the shipper or the consignee; (4) carriers will not act directly or indirectly as agents of shippers or consignees in the assembling or distribution of freight, by signing separate receipts for parts of a single shipment when such separate receipts are in the name of more than one shipper, or by any other means whatsoever.

RULE 54, SEGREGATION CHARGES

This rule shall apply only where specific reference is made hereto in any individual item of this tariff. When the carload rate is applied to a shipment of any commodity named in such rate item of this tariff and the shipment consists of (1) more than one commodity, or (2) one or more commodities bearing more than one brand, sub-mark, or other identifying mark, or (3) more than one grade, kind, size, or shape, or kind, size, or shape of package, shipper must indicate in shipping instructions and the carrier must indicate on the bill of lading each separate commodity, or brand, sub-mark or other identifying mark, grade, kind, size or shape, or kind, size, or shape of package, with the separate weights for each description. The shipment will be sorted and delivered by the carrier in accordance with the bill of lading, and there shall be assessed against the shipment the following additional charges (see Exception):

When shipment consists of—

- 2 of any of the above, add 1 cent per 100 pounds to the rate;
- 3 of any of the above, add 1½ cents per 100 pounds to the rate;
- 4 of any of the above, add 2 cents per 100 pounds to the rate;
- 5 of any of the above, add 2½ cents per 100 pounds to the rate;
- 6 of any of the above, add 3 cents per 100 pounds to the rate;
- 7 of any of the above, add 3½ cents per 100 pounds to the rate;
- 8 of any of the above, add 4 cents per 100 pounds to the rate;
- 9 of any of the above, add 4½ cents per 100 pounds to the rate;
- 10 or more of the above, add 5 cents per 100 pounds to the rate.

¹ Rules 2 (g) and 54 of Alternate Agent Joseph A. Wells' Tariff S. B. I. No. 7. Rule 19 of Calmar Steamship Corp. Tariff S. B. I. No. 6. Rules 2, 3d par. and 20A of Agent J. P. Williams' Tariff S. B. I., No. 3.

EXCEPTION.²—These additional charges do not apply when, in accordance with proper instructions in writing received prior to arrival of vessel at port of discharge, the carrier delivers the shipment as one lot, under one general shipping mark, to go forward via a route involving a rail haul, and no sorting by the carrier or at the carrier's expense is performed in order to effect such delivery and secure receipt therefor.

Rule 54 applies principally to canned goods, dried fruit and related articles which, with lumber and lumber products, constitute the bulk of the eastbound movement.

Prior to February 17, 1938, the eastbound rules, except those applicable to the Gulf, provided that rates applied only to shipments bearing a common shipping mark covered by one bill of lading from one consignor to one consignee. Segregation charges applied only for delivery by sub-marks: 5 cents per 100 pounds when notice was given prior to ship's arrival, and 10 cents thereafter. Due to encouragement by some of respondents, shippers, in a large measure, defeated the application of this rule through the device of describing their shipments by kind, size, brand, or grade rather than by sub-mark.

The eastbound tariff of Gulf Carriers provided that:

(a) Pool car shipments will be segregated and delivered in accordance with the bill of lading or riders.

(b) Bill of lading will show only one shipper and one consignee.

(c) Freight charges must be prepaid in full by the Billed Shipper or collected in full from the Billed Consignee; only one collection of freight charges will be made on any one carload shipment.

(d) Carriers will not act as forwarding agents. The forwarding of sublots to destination beyond the Port of Discharge must be arranged for by the Shipper, Consignee or their Agent.

(e) Carrier will, when requested by the shipper, indicate on the Bill of Lading or Riders the number of packages of each mark, brand, or size, and shipments will be segregated by the carrier and delivered accordingly.

Contentions of the various parties will serve to clarify the following discussion. Shippers do not always know in what manner consignees will request delivery. Respondents contend, therefore, that carriers must prepare for parcel-lot delivery by sorting and piling all shipments on the pier according to detailed designations. They also desire the protection afforded by detailed description of shipments in the adjustment of loss and damage claims on mixed shipments, since they assert that in the absence of such description, settlements are usually based on the highest valued article in the shipment. Furthermore it is stated that special delivery service requires additional pier space and extra labor for sorting, piling, and checking deliveries. Protestants do not object to payment of a reasonable charge when segregation is requested, but they contend that ordinary delivery should be made at the transportation rate.

² On Gulf intercoastal traffic, the additional charges do not apply on traffic forwarded via a connecting water or rail route beyond the Gulf.

Canned goods, dried fruit, and related articles move in (1) straight shipments of one kind, of only one size, brand, or grade; (2) mixed shipments of two or more kinds, with one or more brands, sizes, or grades of each kind; and (3) pool car shipments which may contain (a) individual lots for various buyers consigned as one shipment by a canner or a packer to a broker for distribution (the shipment may contain one or more kinds, and one or more sizes, brands, or grades) (b) individual lots for one buyer from more than one packer or canner, assembled and shipped by an agent of the buyer or a forwarder or a terminal which may or may not contain more than one kind and more than one size, brand, and grade of each kind; and (c) individual lots sub-marked for various buyers from various packers or canners assembled and shipped by a terminal or consolidator in its own name to an agent for distribution.

Prior to February 17, 1938, shipments were described in bills of lading in the following manner: (1) Total number of cases of canned goods or dried fruit, the weight, and a general shipping mark; (2) as just stated but with added sub-marks either on the bill of lading or on a rider attached thereto, and (3) with the number of packages of each kind, size, brand, and grade, on the bill of lading or on a rider attached, the total weight of the shipment, and a general shipping mark. In some instances bills of lading contained notations that no segregation is required. On shipments consigned to brokers wherein a sight draft is attached to the original bill of lading and sent to a bank for collection, notations appear which permitted inspection without surrender of the bill of lading. In compliance with buyers' demands this type of shipment was usually described in detail. Many consignees use the piers as warehouses from which they make distribution of orders to numerous buyers. This requires carriers to make delivery of shipments by kind, size, brand, grade, sub-mark, or other designation in parcel lots. Also shipments are removed to warehouses from which deliveries are made.

When a shipment arrives at a loading pier on the Pacific Coast, a delivery ticket describing the load or lot is presented, the cargo is checked, and a dock receipt is issued to the shipper by the carrier. A copy is retained for the preparation of the bill of lading, and another copy is placed on the shipment where it remains until the shipment is loaded. Each shipment is ordinarily piled in one place on the pier according to kind, size, brand, grade or sub-mark, but it is not unusual that large shipments are piled in several places. Shipments are also loaded direct to the vessel from cars, steamers, and barges. A loading chart is prepared prior to loading, showing where each shipment is to be stowed, a copy of which, when the ship sails, is forwarded to each port of discharge. Each shipment is stowed as a unit in one hatch whenever possible, but frequently large

shipments are stowed in two or more hatches. It often happens that even small shipments will become mixed in one hatch.

Copies of bills of lading and loading chart are received at ports of discharge before the vessel arrives. Notices of arrival, delivery orders, and sorting lists are then prepared, and a place on the pier is marked for each shipment. When the vessel is discharging a clerk in each hatch supervises the stevedores. At North Atlantic ports an attempt is made to sort by general shipping mark in the hatch, but complete sorting, even to this extent, is not always possible. Sorting by sizes, brand, grade, or sub-mark takes place upon the pier as cargo comes from the sling, but sometimes shipments are bunched in one pile by general shipping mark and sorted when discharging has been completed. When a shipment is discharged from more than one hatch portions may be placed in the loft or at one or more places on the lower deck and later assembled.

At New York, local consignees usually take delivery by truck. When the bill of lading calls for canned goods or dried fruit, the cargo is placed in one pile without sorting; but when described in detail it is sorted. Shipments loaded into rail cars for switching to a warehouse are not sorted. Local shipments are delivered to trucks and lighters at ship's side without sorting.

Shipments moving on by rail from New York usually are delivered to lighters moored on the opposite side of the pier across from the ship, or directly to rail cars. Ordinarily they are placed within one hundred feet of the lighter, but when discharge is from more than one hatch portions may be placed at several places on the pier, and either the different portions must be consolidated in one pile or the lighter moved nearer to each pile. Shipments delivered to lighters rarely are sorted and the tally is by number of cases and general shipping mark. This operation frequently takes place while the vessel is discharging. There is less congestion on the pier, less pier labor is required, and delivery is accomplished in a much shorter time than when made to trucks.

Shipments also move beyond a port by truck. When routing instructions are not received prior to discharge, freight is placed in one pile conveniently located for either truck or lighter delivery. Sorting may be performed later, but if not requested, delivery is made from one pile by general shipping mark. Transit time to some inland points is less than if shipments move by rail. It was said that, while the differential between the rail and truck rates does not warrant exclusive use of trucks, the addition of a 5-cent sorting charge to the truck rate would cause the discontinuance of truck routings.

It will be seen that respondents generally do not sort lighter deliveries; that shipments moving beyond by truck have not always

been sorted; and that local shipments have not been sorted if the bill of lading did not contain detailed designations. Shepard Steamship Company, not involved in No. 459, sorts its shipments irrespective of the manner of delivery. It stated that a shipment billed as "canned goods" and delivered by general mark need not be sorted and that detailed designations are not necessary in the ordinary course of business. All respondents state that sorting is necessary to effect delivery in parcel lots. Shepard finds it more economical to sort a shipment during discharging operations.

In certain mixed shipment of canned goods, as for instance powdered milk in barrels, kegs, and cans there is a natural separation of the various containers when they are placed upon the pier. In according mixture privileges carriers should, and according to Shepard, usually do consider the nature of the commodity, the size of packages in which shipments are ordinarily made, and also other pertinent factors.

At New Orleans shipments move beyond via rail, barge, and river steamer and deliveries generally are made by general shipping mark, but the greater number of shipments are for delivery to local consignees. At least 50 per cent of the latter are delivered in parcel lots and in some instances the number of deliveries in a single shipment have been greater than at New York. Sorting in the hatch other than by general shipping mark is performed, but in the interest of despatch, when cargo is moving rapidly shipments are dumped on the wharf by the general mark and sorted later according to bill of lading designations. Brokers and wholesale grocers at this port also use warehouses for sorting shipments, although in instances they have requested and received parcel lot delivery. Local brokers compete with brokers at inland points located on rail and water routes. Shipments to inland brokers are exempted from the payment of the charge which the rule imposes upon the local broker.

Protestants admit there have been numerous deliveries, but they contend that an excess of 10 deliveries of one shipment is unusual. Analysis of an exhibit introduced by respondents serving Atlantic ports shows that in 82.5 percent of a total of 400 shipments made during a 3-month period, there were no more than 10 deliveries of any shipment. Of 3,000 shipments of canned goods and 1,000 shipments of dried fruit transported to Atlantic and Gulf ports during a 12-month period, 77 and 83 percent, respectively, required no more than 10 separations on the pier. Respondents testified that a shipment required as many separate piles as there were kinds, sizes, brands, grades, or sub-marks. However, the exhibit above mentioned shows that, while shipments contained as many as 48 different kinds,

sizes, brands, grades, or sub-marks, no shipment was placed in more than five piles on the pier, and only a few shipments were placed in more than three piles.

Respondents load eastbound cargo and discharge westbound cargo not only at piers at San Francisco, but also at East Bay terminals of the Board of Port Commissioners of the Port of Oakland, Howard Terminal, and Encinal Terminals. These terminals charge respondents dockage, and in addition a service charge which varies according to the commodity handled. In effect, the terminal acts as agent for carriers in the receipt and delivery of shipments, the services performed being identical with those which respondents perform for themselves at San Francisco.

The terminals also offer to shippers a pool shipment or forwarding service through which small shipments called "enclosures" are consolidated into carload quantities which then move from one consignor to one consignee at the carload rate. Bills of lading may be issued in the name of the terminal as both the shipper and the consignee or in the name of persons for whom it makes the consolidation. Such shipments from Howard Terminal are submarked, but shipments from Encinal to certain ports are described by kind, size, brand, or grade and consigned to its own agent at each port. When consigned to an agent notices of arrival are sent by the agent who handles other minor details in connection with the distribution. Shipments of Encinal to other ports have been consigned in care of the steamship company. Bill of lading description is by submark, and freight is partly prepaid, the balance being collected by the carrier. In addition to a fee for issuing enclosure receipts, the terminals collect car loading and car unloading charges, the California State toll, and on shipments to certain ports a charge of 5 cents per 100 pounds, said to be a sorting or segregation charge. On shipments to Atlantic Coast ports delivered by submark the charge is turned over to the carrier; on other shipments it is divided between the terminal and its local representative, but the extra sorting upon the pier and the service of parcel-lot delivery, when performed, is by the carrier.

Westbound segregation practices, involved in No. 322 will be considered next. Generally speaking, the rules of respondents provide that rates apply only when shipment is made by one shipper, on one bill of lading, under one shipping mark, to one consignee. Restrictions in the tariff of Gulf respondents permit application of rates to shipments received from not more than "two shippers" and/or from not more than "two shipping points." A charge of 10 cents per 100 pounds applies for deliveries by other than one shipping mark. Respondents engage in the practice of delivering shipments to more than one person in numerous parcel lots, by kind, size, brand, grade,

submark, or other designation. They fully recognize such service is without tariff authority, but state that consideration is being given to the publication of a rule for westbound application.

In contrast to eastbound traffic, which is confined to relatively few commodities moving in large volume, the traffic westbound is highly diversified and there is a greater volume of less than carload shipments. Shipments by forwarders usually include numerous small lots of articles such as toys, chain store goods, and general merchandise, submarked for individual buyers; and even though the bill of lading names only one consignee, delivery frequently is made by submark to the owner of each lot. Deliveries also are made to consignee and to others in parcel lots by submarks, and by kind, size, brand, grade, or other designation of commodities such as drugs and chemicals, canned goods, and tires and tubes.

Shipments moving beyond the port are not sorted at the transshipment point unless it is requested by the connecting carrier. At San Francisco consignees frequently refuse to take delivery unless shipments are sorted. Other consignees do not require such service. Practices in handling westbound cargo are not materially different from those hereinbefore discussed in the eastbound trade. Stowage problems generally are more difficult of solution, due in part to the varied nature of the shipments.

The practice of respondents operating between Atlantic and Pacific Coast ports prior to February 17, 1938, of making parcel-lot deliveries of eastbound shipments by kind, size, brand, or grade, or designations other than by sub-mark was prohibited by tariff rule and was unlawful. Shepard is still observing such practice. The same practice of Gulf respondents in respect to deliveries of eastbound shipments except those in pool-cars was unlawful for the reason stated above. A similar practice of all respondents now in effect in respect to westbound shipments whether delivery be by sub-mark or other designation also is in contravention of their tariff and is unlawful.

The services performed by terminal companies on eastbound shipments for which a charge of 5 cents per 100 pounds is collected includes the mailing of arrival notices. The mailing of arrival notices to the consignee shown in the bill of lading is clearly a duty of the carrier for which an extra charge is not proper, and since the actual sorting and delivery of shipments upon which the charge is assessed is performed by the carrier there appears a lack of any service by these agencies which would warrant its collection. Other than for deliveries at Atlantic Coast ports by sub-marks, there is no tariff authority for such a charge. Under section 2 of the Intercoastal Shipping Act, 1933, the duty of publishing, filing, and posting all such charges rests upon respondents.

The practice of respondents operating to Atlantic Coast ports in making deliveries prior to February 17, 1938, by kind, size, brand, and grade, without charge, while at the same time collecting a charge for parcel-lot deliveries by sub-mark, was unduly preferential to consignees or other persons who received such deliveries by other than submark and unduly prejudicial to those who took delivery by sub-mark, in violation of section 16 of the Shipping Act, 1916. Respondents admit this, urging that Rule 54 will remove such unlawfulness as to eastbound transportation.

Requirements of carriers in respect to bill of lading descriptions must be of general application to all classes of shippers and shipments; otherwise, undue preference and prejudice will result. It apparently is the intent of respondents that all shipments must be similarly described, but the rule does not state whether the contents of each lot in a pool-car shipment sub-marked must also be described in detail. It is not clear whether each sub-marked lot must also be separated by kind, size, brand, or grade, and if so whether charges shall be assessed in accordance with the rule. For these reasons the rule is ambiguous, and therefore unlawful.

When delivery is made to a lighter, rail-car, barge, river steamer, or truck, for movement beyond the port, the shipment ordinarily is checked by the intercoastal carrier by number of cases or packages and general shipping mark, and there is no detailed sorting by any carrier other than by Shepard. A charge is imposed upon deliveries to trucks, but there is no charge when shipments are delivered to other conveyances. There is also a similarity of treatment in deliveries to a lighter whether for local delivery or for a rail haul, but the charge applies only upon the local delivery. In this respect the rule is unduly prejudicial and preferential.

The rule also requires the payment of charges by local consignees who perform their own sorting, or who employ warehouses to perform that service, at places other than the piers and who are willing to take delivery of their shipments by general shipping mark with reasonable despatch within free time. It forces those who have no need for and who do not request parcel-lot delivery to contribute to the expense incident to such delivery when it is requested and performed. In this respect the rule is unjust and unreasonable.

No charge will be assessed against a straight shipment of one kind, and which consists of only one size, brand, or grade; in fact, under Rule 2 (g) such a shipment could not lawfully be delivered in parcel-lots, either with or without charge. But, apparently, it is respondents' intention to continue parcel-lot deliveries for, as announced by counsel, upon the assessment of a charge under Rule 54 any number of parcel-lot deliveries of a single shipment will be made. To accord a

greater privilege to a mixed shipment than is accorded to a straight shipment would constitute undue preference and prejudice in violation of Section 16 of the Shipping Act, 1916. The conclusion, therefore, is inescapable that unlawfulness may result under the tariffs as they are now published.

The rule applies to shipments discharged at all Atlantic and Gulf ports. Respondents presented no testimony regarding operating conditions at ports of discharge other than New York and New Orleans. Protestants, however, presented testimony concerning conditions at other Atlantic and Gulf ports showing that in many instances the charge would apply on shipments that required no sorting, as for instance where deliveries are made in one lot by general shipping mark and where the cargo is transferred to local warehouses for sorting. It is reasonably clear from protestants' testimony that the rule as it is now published gives little, if any, consideration to the manner in which shipments are handled at the ports named above and that its operation will be unjust and unreasonable.

Protestants direct attention to court decisions which require merchandise to be placed on the pier properly separated so as to be open to inspection by the owner. That there is such an obligation upon a carrier is not open to question, but the service required is not the separation of individual shipments but a separation of each shipment from the general mass of cargo.

Respondents contend that to perform parcel-lot delivery in the most economical manner, requests for such delivery must be anticipated; and that additional work is performed at the port of loading and also in the hatch when discharge commences and in the placement at place of rest on the pier. But it was not stated what additional work was performed over and above that necessary in the ordinary handling of cargo. The record is not convincing that there is any substantial amount of additional labor performed until cargo is hoisted out of the ship to the pier.

Shipments are tallied when received from the shipper and are checked against the bill of lading when delivery is made at the port of discharge. This check is made for the carrier's protection as assurance that delivery is being made of the entire bill of lading quantity. Some sorting on the pier also is necessary to insure proper delivery of mixed shipments. These services, performed for the convenience of the carrier in effecting normal delivery, should be included in the published rate.

Subject to clarification to meet objections hereinbefore mentioned, requirements for uniformity and more detailed descriptions in shipping instructions and bills of lading do not appear unreasonable. Such detailed designations will unquestionably operate as an aid

to carriers in making proper delivery in accordance with their tariffs, and also as protection against unjust claims. Respondents have referred to the necessity of the rule to properly check lost and damaged goods that they may avoid settlements based on the highest valued article in a shipment. But in view of the manner in which shipments are delivered to lighters, barges, river steamers, rail cars, and trucks for movement beyond ports, difficulties in this respect will still continue. Designations of the nature required, of themselves, do not constitute either a request for special sorting on the pier or an indication of the manner in which consignee will take delivery. In this connection, provisions of the Harter Act, the Bills of Lading Act, and other statutes should be construed as imposing upon carriers minimum, not maximum, requirements.

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. Parcel-lot delivery may require somewhat different handling on the pier than is ordinarily the case, but it is improper to assess any part of the cost thereof against a consignee who does not request or receive extraordinary delivery.

No evidence was introduced in justification of the measure of the various charges. Gulf respondents referred to the constantly advancing wage scales for stevedores and for pier labor, but labor costs are incurred in ordinary loading and unloading operations, and it is not possible upon this record to determine what proportion may be properly applied to special sorting or extraordinary delivery services. A scale of charges for parcel-lot deliveries based upon pier labor alone is open to question; in fact, protestants claim that basis is unreasonable on the theory that the sorting service is not reasonably related to the service of delivery. There is some merit in that contention since for two sortings the charge would be 1 cent per 100 pounds or approximately 20 cents per ton. Yet any number of deliveries might be made without charge. At San Francisco it was testified that the extra cost of checking parcel-lot deliveries on west-bound traffic was 30 cents per ton, and of piling canned goods on the pier by kinds, sizes, brand, grade, or sub-mark was 66 cents a ton. It is doubtful that costs in the Gulf or on the Atlantic seaboard are sufficiently lower to successfully defend even the minimum charge under the rule. Shippers of enclosures in pool shipments protest the sliding scale on the ground that buyers want to know their actual delivered costs. This is not possible when the total number of sortings which the entire shipment will require is unknown to either shipper or consignee. In general, we are of the opinion that all costs involved in the service should be reflected in the charge. But

since the principal justification for any charge lies in the special delivery facilities, the charge should be based on the service of delivery, and irrespective of the number of deliveries, a uniform charge should be made. No objection was interposed to the 5-cent charge in effect prior to February 17, 1938.

Little objection was offered to Rule 2 (g). The only shipper requesting its suspension withdrew its objection thereto at the New York hearing. This rule has not been shown to be unlawful.

For the reasons stated above we find (1) that Rule 2 (g) and rules similar thereto published by Calmar Steamship Corporation and on behalf of Gulf respondents are not unlawful; and (2) that Rule 54 and rules similar thereto published by Calmar Steamship Corporation and on behalf of Gulf respondents are unduly prejudicial and unduly preferential, and unreasonable in violation of sections 16 and 18 of the Shipping Act, 1916, respectively.

We further find (1) that the practice of respondents, as more fully described herein, in according segregation service in violation of their tariffs was and is unlawful; and (2) that the practice of respondents operating to Atlantic coast ports in making deliveries by kind, size, brand, and grade without charge, while assessing a charge for parcel-lot deliveries by sub-mark was and is unduly preferential and prejudicial in violation of section 16 of the aforementioned Act.

An order will be entered requiring respondents in No. 322 to cease and desist from the aforementioned practices found unlawful, and requiring respondents in No. 459 to cancel their rules with respect to segregation of eastbound shipments, referred to herein as Rule 54. We will not prescribe a rule at this time, but will leave the record open for a period of 60 days from the date of the order herein, to afford respondents an opportunity to publish and file a rule covering segregation of eastbound and westbound intercoastal shipments, which should read substantially as follows:

This rule shall apply only where specific reference is made thereto in any individual item of this tariff. The contents of all shipments must be declared by the shipper in detail in shipping instructions, and by the carrier on bills of lading, by stating:

- (a) The number of packages or other unit in the shipment;
- (b) The general shipping mark, and also the various sub-marks, if packages contain sub-marks;
- (c) The weight of each commodity or kind; and
- (d) If there are different commodities or kinds, sizes, brands, grades, or other identification of packages, the number of packages and the weight of each such commodity or kind, size, brand, grade, or other identification of package.

No charge, other than the published rate, will be assessed on shipments consigned to persons located at the port of discharge when delivery of the shipment, either in single or parcel lots, is made to one consignee by general shipping mark and number of packages or other unit. Upon specific request in writing received from the shipper or consignee, prior to the arrival of the vessel at port of discharge, delivery will be made to either one or more than one person in single or parcel lots by designations enumerated above other than general shipping mark and number of packages or other unit, in which event the shipment will be sorted and piled upon the pier according to the designations named in the request, and a charge of ---- cents per 100 pounds upon the entire billed weight of the shipment will be applied in addition to the transportation rate. (Note: A similar provision may be published to authorize single or parcel-lot delivery upon requests received subsequent to arrival of the vessel.)

No additional charge will be assessed on shipments moving beyond the port of discharge by truck, rail car, lighter, vessel, or other conveyance when delivery of the entire shipment is made to the on-carrier by general shipping mark and number of packages or other unit; provided, that upon specific request in writing from the shipper or consignee special delivery by other than general shipping mark and number of packages or other unit will be performed, in which event a charge of ---- cents per 100 pounds upon the entire billed weight of the shipment will be applied in addition to the transportation rate.

1 U. S. M. C.

APPENDIX "A"

RESPONDENTS IN NO. 459

- Alameda Transportation Co., Inc.
American-Hawaiian Steamship Company.
(Arrow Line) Sudden & Christenson.
- *Babbidge & Holt, Inc.
Bay Cities Transportation Company.
The Border Line Transportation Company.
The California Transportation Company.
Calmar Steamship Corporation.
- *Christenson-Hammond Line (Hammond Shipping Co., Ltd., Managing Agents).
*Coastwise Line, Columbia Basin Terminals.
*The Consolidated-Olympic Line (Consolidated Steamship Companies, Olympic Steamship Company, Inc.).
Crowley Launch & Tugboat Co.
Dollar Steamship Lines Inc., Ltd.
Erikson Navigation Company.
Freighters, Inc.
(Grace Line) Panama Mail Steamship Company.
Gulf Pacific Mail Line, Ltd.
Haviside Company.
Isthmian Steamship Company.
A. B. Johnson Lumber Company.
Luckenbach Gulf Steamship Company, Inc.
Luckenbach Steamship Company, Inc.
McCormick Steamship Company.
- *Marine Service Corporation.
- *Northland Transportation Company.
(Panama Pacific Line) (American Line Steamship Corporation and The Atlantic Transport Company of West Virginia).
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.
Schafer Bros. Steamship Lines.
Shaver Forwarding Company.
Skagit River Navigation & Trading Company.
States Steamship Company (California-Eastern Line).
Sudden & Christenson.
Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line).
Weyerhaeuser Steamship Company.

RESPONDENTS IN NO. 322

All respondents in No. 459 are respondents in No. 322 except those designated by asterisk (*) above. The following carriers are also respondents in No. 322.

Agwilines, Inc.
America Transportation Company.
American Foreign Steamship Corporation.
The Bull Steamship Line.

California Steamship Company.
Chamberlin Steamship Co.
Fay Transportation Company.
Hammond Shipping Company, Ltd.. Managing Agents (Christenson-Hammond
Line).
Hammond Steamship Company, Ltd.
Inland Waterways Corporation.
Jones Towboat Company.
Los Angeles-Long Beach Despatch Line.
Los Angeles Steamship Co.
Marine Service Corporation.
Merchants & Miners Transportation Company.
Mississippi Valley Barge Line Company.
Nelson Steamship Company.
New York & New Jersey Steamboat Company.
Pacific Coast Direct Line, Inc.
Pacific Steamship Lines, Ltd.
Sacramento Navigation Company.
Salem Navigation Company.
San Diego-San Francisco Steamship Co.
Shepard Steamship Company.
Williams Steamship Corporation (Dissolved).

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 29th day of March, A. D. 1938.

No. 322

SEGREGATION PRACTICES AND CHARGES OF INTERCOASTAL CARRIERS

No. 459

EASTBOUND INTERCOASTAL SEGREGATION RULES AND CHARGES

It appearing, That pursuant to orders dated October 28, 1935, and October 14, 1937, this Commission entered upon hearings concerning the lawfulness of segregation practices, rules, and charges of respondents named in Appendix "A" herein, having by the latter order, which involved the lawfulness of schedules enumerated and described therein, suspended the operation of said schedules until February 17, 1938;

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 the respondents in No. 322 be, and they are hereby, notified and required to cease and desist, on or before May 28, 1938, from practices herein found unlawful; and

It is further ordered, That the respondents in No. 459 be, and they are hereby, notified and required to cancel, effective on or before May 28, 1938, 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 in section 2 of the Intercoastal Shipping Act, 1933.

By the Commission.

[SEAL]

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

Secretary.

UNITED STATES MARITIME COMMISSION

No. 182

IN THE MATTER OF FARES AND CHARGES FOR TRANSPORTATION BY WATER
OF PASSENGERS AND BAGGAGE BETWEEN THE UNITED STATES AND
PUERTO RICO AND PRACTICES RELATING THERETO

Submitted March 16, 1938. Decided April 5, 1938

Petition to discontinue proceeding granted

*Roscoe H. Hupper, Burton H. White, E. M. Bull, James E. Light,
C. F. Heitmann, J. R. Maloney, James G. Barnward, J. P. Case,
James H. Condon, R. F. Burley, and Joseph Mayper for respondents.*

*William Cattron Rigby and Hugh C. Smith for Government of
Puerto Rico.*

REPORT OF THE COMMISSION

BY THE COMMISSION:

This investigation was instituted upon representations of the Government of Puerto Rico that passenger fares and baggage charges of respondents for transportation between the United States and Puerto Rico were unduly prejudicial and unreasonable, and that tours were conducted through agreements, understandings, or otherwise in such manner as to subject the ports of Puerto Rico and persons located therein to undue prejudice, in violation of the Shipping Act, 1916.

All carriers operating between continental ports of the United States and Puerto Rico in regular or cruise service were named respondents.¹ At the hearing it was disclosed that allegations of unlawfulness under section 18 of the act were directed primarily against the service to and from New York, N. Y., of the principal respondent, The New York and Porto Rico Steamship Company, in

¹ Aktiebolaget Svenska Amerika Linien, Anchor Line (Henderson Brothers), Limited, The Atlantic & Caribbean Steam Navigation Company, Baltimore Insular Line, Inc., Bull-Insular Line, Inc., Canadian Pacific Steamships, Limited, Compagnie Generale Transatlantique, Cosulich-Societa' Triestina di Navigazione, Cunard White Star Limited, Hamburg-Amerikanische Packetfahrt Actien Gesellschaft, Italia-Flotte Riunite Cosulich-Lloyd Sabauda-Navigazione Generale, Lykes Bros. Steamship Co., Inc., McCormick Steamship Company, The New York and Porto Rico Steamship Company, N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn", Norddeutscher Lloyd, United States Lines Company, and Waterman Steamship Corporation.

that the class of vessel operated, the accommodations, and service thereon generally, were inferior and inadequate when considered in relation to the fares charged. Failure to accord cruise fares to persons desiring to visit Puerto Rico only, whereas such fares were published covering cruises to Santo Domingo via San Juan, P. R., was advanced in support of the allegations under section 16 of the act.

Developments subsequent to hearings have resulted in a decision by The New York and Porto Rico Steamship Company to place an additional vessel in service. This vessel when placed in operation will substantially improve the character of the service offered to the public. In view of this, counsel for that respondent filed a petition that the proceeding be discontinued without prejudice, which was concurred in by counsel for the Government of Puerto Rico. An order discontinuing the proceeding will be entered.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 5th day of April, A. D. 1938.

No. 182

IN THE MATTER OF FARES AND CHARGES FOR TRANSPORTATION BY WATER OF PASSENGERS AND BAGGAGE BETWEEN THE UNITED STATES AND PUERTO RICO AND PRACTICES RELATING THERETO

Hearings having been held in this proceeding, and subsequent thereto the principal respondent having filed a petition requesting that the case be discontinued, which was concurred in by counsel for the Government of Puerto Rico, 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 be, and it is hereby, granted without prejudice to any subsequent regulatory proceeding upon complaint or otherwise involving the same or related issues, 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. 453

AMERICAN NORIT COMPANY

v.

AGWILINES, INC. (CLYDE-MALLORY LINES)

Submitted February 12, 1938. Decided April 19, 1938

Rates on activated carbon from Jacksonville, Fla., to New York, N. Y. found unreasonable. Reparation awarded.

S. S. Eisen for complainant.

J. T. Green and *H. L. Walker* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. His findings, in substance, are adopted herein.

By complaint filed August 13, 1937, complainant corporation alleges defendant's rates charged on carload shipments of activated carbon moving from Jacksonville, Fla., to New York, N. Y., within two years next preceding filing of the complaint, were unreasonable in violation of section 18 of the Shipping Act, 1916. Reparation only is sought. Emergency charges assessed in addition to the freight rates were not assailed. Rates will be stated in cents per 100 pounds.

Activated carbon produced at complainant's plant at Jacksonville is a granulated and powdered processed charcoal, used for decolorizing, filtering, deodorizing, and purifying purposes, and as an absorbent. It is shipped in multiple-wall paper bags, burlap bags, and iron drums; it is not subject to pilferage; and no loss and damage claims in connection with its transportation have been made against defendant. Activated carbon in carload lots is valued at \$85 per ton, F. O. B. Jacksonville, and competes with mineral earth blacks manufactured at and shipped from Marshall, Tex., activated charcoal from Marquette, Mich., activated charred wood pulp from Tyrone, Pa., and with similar commodities manufactured at various places throughout the United States.

The shipments here considered were made August 18, 1935, August 21, 1935, December 5, 1935, February 13, 1936, and April 23, 1936, respectively. They weighed 32,480 pounds, 35,525 pounds, 36,676 pounds, 30,450 pounds, and 34,510 pounds, respectively. Charges were collected in the sum of \$803.82. Defendant's sixth-class rate, carload minimum 30,000 pounds, was applicable, it being 47 cents until March 2, 1936, when it was increased to 48 cents.¹ Complainant testified these rates seriously handicapped it in marketing its product in the principal consuming markets located in Official Classification territory, as its principal competition was from producers at Marshall, Tex., and Marquette, Mich., from which points the rail rates to the common markets were a much lower percentage of first class than the water rates from Jacksonville. Negotiations with defendant resulted in establishment of a specific commodity rate of 40 cents from Jacksonville to New York, effective July 1, 1936, to which basis complainant seeks reparation.

In addition to showing the voluntary rate reduction, and as support for its contention that rates on the full sixth-class basis were unreasonable, complainant compared the assailed rates with those contemporaneously maintained by defendant on other commodities subject to Southern Classification ratings of sixth-class or higher, but for which rates lower than sixth-class were provided between Jacksonville and New York. Its testimony that the movement of activated carbon compares favorably with the movement of the compared commodities was not disputed. The following table of rates is representative of the aforementioned comparisons:

Commodity	Rate	Value	Density	Revenue
	<i>Cents</i>	<i>Dollars per ton</i>	<i>Pounds per cubic foot</i>	<i>Per cubic foot</i>
Baking or yeast powder.....	34	360	37	\$0.126
Blacking or shoe dressing.....	44	366-728	30	.132
Paper boxes, other than corrugated, K. D.....	28½	73.80	7.86	.022
Candy or confectionery.....	38½	400-460	31-40	.137
Chicory.....	38½	160	34	.131
Coffee, roasted.....	44	255-426	26	.114
Iron and steel articles.....	28½	58-93	41	.117
Soap: soap powder; cleaning, scouring, or washing compounds, dry.....	29½	66-192	47	.139
	47	.		.141
Activated carbon.....	48	85	30	.144
	40			.120

On 13 of the compared commodities the value averaged \$229.30 per ton and the revenue per cubic foot produced by the rate thereon averaged 9.9 cents.

¹The rate of 48 cents was applied on the shipment made February 13, 1936. As this rate was not effective until March 2, 1936, the shipment was charged a rate in excess of the maximum rate filed with the Commission.

Defendant showed the history of the controversy resulting in establishment of the commodity rates and argues that as the present sixth-class all-rail rate from Jacksonville to New York and the present rail-water rate applicable via Norfolk, Va., are 80 cents and 72 cents, respectively, the rates of defendant for all-water movement are and were reasonable even under the sixth-class rate in effect prior to July 1, 1936.

The voluntary reduction of a rate without other supporting facts and circumstances does not warrant the inference that the rate prior to the reduction was unreasonable, but here complainant did not rely solely upon such reduction. The record discloses that the full sixth-class rates of 47 cents and 48 cents on activated carbon, a commodity with no disclosed undesirable transportation characteristics and valued at approximately 37 percent of the average of the 13 compared commodities referred to upon which lower rates applied, produced a revenue per cubic foot in excess of that from the rate on each of such commodities except one, and approximately 142 percent of the average revenue derived from such commodities.

We conclude and decide that the rates assailed were unreasonable to the extent they exceeded 40 cents. We find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid, exclusive of emergency charges, and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$125.26.

An appropriate order will be entered.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION held at its office in Washington, D. C., on the 19th day of April A. D. 1938.

No. 453

AMERICAN NORIT COMPANY

v.

AGWILINES, INC. (CLYDE-MALLORY LINES)

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 defendant, Agwilines, Inc. (Clyde-Mallory Lines) be, and it is hereby, authorized and directed to pay unto complainant, American Norit Company, of Jacksonville, Fla., on or before 30 days from the date hereof, the sum of \$125.26 as reparation on account of unreasonable transportation charges collected on five carload shipments of activated carbon from Jacksonville, Fla., to New York, N. Y., on or about August 18, 1935, August 21, 1935, December 5, 1935, February 13, 1936, and April 23, 1936, respectively.

By the Commission.

[SEAL]

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

UNITED STATES MARITIME COMMISSION

No. 457

IN RE LAWFULNESS OF PAYMENTS TO SHIPPERS BY WISCONSIN &
MICHIGAN STEAMSHIP COMPANY THROUGH AUTOMOTIVE DEALERS'
TRANSPORT COMPANY

Submitted March 28, 1938. Decided July 7, 1938

Payments to shippers of automobiles by Wisconsin & Michigan Steamship Company through Automotive Dealers' Transport Company found to be an unjust device to obtain transportation by water at less than the rate which would otherwise apply. As question is now moot, proceeding discontinued without prejudice to rights of parties in any subsequent proceeding.

Ralph H. Hallett and *Edward B. Hayes* for the Commission.

George H. Parker for Nicholson Universal Steamship Company, intervener.

T. H. Spence for respondents.

REPORT OF THE COMMISSION

BY THE COMMISSION :

This proceeding was instituted by the Commission on its own motion to determine: (1) the lawfulness under the Shipping Act, 1916, as amended, of payments made by respondents, Wisconsin & Michigan Steamship Company, hereinafter called W. and M., Automotive Dealers' Transport Company, hereinafter called A. D. T., and Michigan Dock Corporation to certain shippers of automobiles over the all-water route from Detroit, Mich., to Milwaukee, Wis., in consideration for the giving of all or a portion of such persons' shipments to W. and M., A. D. T., and Michigan Dock Corporation, in violation of sections 14 and 16 of the Shipping Act, 1916, as amended; (2) whether respondents have entered into an agreement or agreements and operated thereunder in violation of section 15 of that act; (3) and whether respondents are engaged in transportation without observing the provisions of section 18 of the act. Nicholson Universal Steamship Company intervened at the hearing in opposition to respondents.

W. and M., a common carrier by water in interstate commerce on the Great Lakes, has owned and operated vessels on Lake Michigan

for a number of years, transporting freight and passengers, including automobiles, motor trucks, and trailers between Muskegon, Mich., and Milwaukee. In 1935, it entered into arrangements with Great Lakes Transit Corporation and bulk cargo private vessels for the transportation at a specified compensation of automobiles over the all-water route from Detroit to Milwaukee on vessels operated by them. Prior to April 1, 1937, George W. Browne, traffic manager of the automotive division of W. and M., solicited transportation of automobiles for W. and M. at a salary of \$7,500 a year plus commissions of about \$3,900 on the 1936 business, the commissions representing 50 percent of the net carrier revenue on automobiles. In 1936, W. and M. handled 5,260 automobiles over the all-water route from Detroit to Milwaukee. Great Lakes Transit and Nicholson Universal compete with W. and M. for this business.

During January and February, 1937, Mark T. McKee, president of W. and M., and Browne conceived the idea of forming a corporation to increase the volume of automobile shipments over W. and M., the stock of which was to be owned in part by them and the balance sold to automobile dealers in or near Milwaukee, and on February 23, 1937, the A. D. T. was organized with authorized capital stock of 500 shares of 5 percent preferred stock, par value of \$10 and 250 shares of common stock, par value \$100. Preferred and common stock had equal voting power. Mark T. McKee, George W. Browne, A. J. Rettig, T. H. Spence, Harry Dahl, Frank J. Edwards, and Read E. Widrig were elected directors. McKee, Browne, Rettig, and Spence are connected with W. and M. in the respective capacities of president, traffic manager of the automotive division, treasurer, and attorney. The remaining three directors are automobile dealers in Milwaukee. McKee is also a director of respondent Michigan Dock Corporation, which operates a wharf at Detroit used by Great Lakes Transit, W. and M., and other water carriers. Michigan Dock Corporation subscribed to all of the preferred stock. The original subscriptions to common stock were as follows: McKee, 53 shares; Browne, 15 shares; Dahl, 10 shares; Edwards, 15 shares; Widrig, 4 shares; and Spence, Enright, and Dietrich 1 share each. Enright and Dietrich are clerks in Spence's law office and signed the articles of organization. Their shares were later taken by Widrig and Rettig. All but 15 shares of McKee's stock was to be sold to automobile dealers who had previously indicated a desire to become stockholders. Only 20 percent of the value of the subscriptions were called for payment. On March 16, 1937, the following were elected officers of the company by the board of directors: McKee, president; Browne, vice president; Spence, secretary; and Rettig, treasurer. The officers drew no salaries.

The board of directors immediately approved a form of contract to be entered into between A. D. T. and automobile dealers providing that (1) the shipper agrees to ship exclusively through the new corporation during the summer shipping seasons of 1937, 1938, and 1939, estimating the number of automobiles to be shipped in 1937; (2) the shipper reserves the right to use other means of transportation in any case where prompt service is desired and where A. D. T. is unable to provide such service within a reasonable time; (3) A. D. T. agrees to accept for shipment on standard bills of lading all automobiles offered for shipment by the shipper and to provide facilities for handling and transportation from Detroit to Milwaukee, to arrange for insurance against fire and theft, collision and the hazards of transportation, and to deliver all such shipments to the shipper or his order at Milwaukee; (4) the rates to be charged for transportation are to be the minimum going rates at the time of shipment; and (5) the contract is not to be subject to cancellation by either party except for breach of a material covenant by the opposite party.

Officers of the company were authorized to enter into this contract on behalf of the company and to negotiate with W. and M. for the handling of automobile shipments to Milwaukee by the all-water route from ports in Michigan, including terminal handling, insurance, and other incidents of transportation, with the understanding that a written contract with W. and M. would be submitted to the board of directors. No such contract in writing with W. and M. was made before operations began and, so far as the record shows, no agreement with W. and M. was ever approved by the board of directors.

Selling of A. D. T. stock to automobile dealers and solicitation of automobile transportation began at once. Every subscriber to stock was required to sign a contract providing for exclusive handling of shipments as herein described. The amount of stock issued to any one dealer was based on the probable number of automobiles which the dealer would ship. One share of stock in practically every instance was issued for every 200 automobiles estimated to be shipped in 1937, although witnesses for respondents deny that it was so planned. Certain dealers desired to buy more stock, but were denied that privilege. The plan was to have automobile dealers purchase stock since that would induce them through the payment of dividends to use the facilities of the company.

On May 21, 1937, a memorandum agreement between A. D. T. and W. and M. was executed in the form of a letter from Louis N. Biron, vice president and general manager of W. and M. to McKee who accepted it for A. D. T., acting as its president. It provided that A. D. T. was to receive fees from W. and M. for the solicitation of

automobile traffic on the basis of \$3.25 per automobile when the rate is \$12; \$3.25 plus one-half of the amount of the rate in excess of \$12; and \$3.25 less one-half of the difference between the rate and \$12, when the rate is less than \$12. It provided that expenses incurred by W. and M. for dockage and storage charges at Milwaukee, for clerical hire, terminal expenses, telephone and telegraph, storage, insurance, solicitation, and other expenses, would be billed by W. and M. to A. D. T., which would reimburse W. and M. for its expenses. The arrangement also included provisions for the use of bulk freight steamers other than those of Great Lakes Transit Corporation. The fees of the A. D. T. in such cases were to be the net remaining balance between the applicable rate of \$12 and the following deductions: \$6 per automobile to be paid for charter; \$1.17½ for dockage at Detroit; and 20 cents per \$100 cargo insurance on insured value of automobile. Dockage and storage charges at Milwaukee on automobiles transported by bulk carriers were to be billed by W. and M. to A. D. T. which would reimburse W. and M. for such expenses. There is no evidence of record that Biron was authorized to make an agreement on behalf of bulk carriers. Testimony of record indicates that the agreement between W. and M. and the bulk carriers was in the nature of an oral general understanding. It was understood by the agreement between A. D. T. and W. and M. that disbursements incurred by W. and M. for diversions over other lines of automobile traffic solicited by A. D. T. would be billed by W. and M. to A. D. T. which would reimburse W. and M. for such disbursements. It was further understood and stipulated that claims for loss and damage paid by W. and M. on automobile traffic upon which A. D. T. receives fees would be billed by W. and M. to A. D. T. which would reimburse W. and M. for such disbursements.

It might be inferred from these agreements that A. D. T. performed or assumed common carrier service or obligations. On the contrary the evidence shows that its only activity was that of selling its own stock to automobile dealers and soliciting automobile traffic through Browne. It published no tariffs of rates as required by section 18 of the Shipping Act, 1916, owned no property, had no paid employees, and took no part in accepting, routing, carrying, or delivering shipments. Its activities were carried on in the offices of W. and M. or Spence. On the other hand, the W. and M. filed its rates with the Commission, issued its standard bills of lading to shippers, billed shippers for and collected the freight charges. Being so situated, A. D. T. required no capital upon which to start operations. The \$5,000 paid for preferred stock by Michigan Dock Corporation through McKee was immediately invested in 5 percent bonds

of Sand Products Corporation of which McKee is vice president and Rettig, secretary.

Between April 16 and May 23, 1937, shipments of 1,389 automobiles on 19 vessels were made, netting A. D. T. about \$3,223.36. This sum represented the difference between the \$12 rate charged shippers by W. and M. for transportation and the charge of \$8.65 per car paid to Great Lakes Transit for use of its vessels by W. and M. after deducting charges for wharfage, insurance, and other services, assumed by W. and M. On May 23, 1937, the board of directors authorized a dividend of \$30 per share to be paid to stockholders of record as of June 1937, and the dividend was paid. Some of the dividend checks were photographed and displayed by Browne to prospective purchasers of stock as an inducement to buy stock and sign exclusive shipping contracts. On August 5, 1937, the board of directors had another meeting at which time it was reported that between May 24 and June 30, 1,072 cars had been handled upon which the company realized a profit of \$1,432.54. Another dividend of \$30 per share was immediately declared and paid.

The testimony of members of the board of directors, and stockholders of A. D. T. revealed a lack of knowledge as to the purposes and functions of A. D. T. and the relation between A. D. T. and W. and M. Some testified that the source of revenue was the difference between a so-called "wholesale rate" and retail rate. Others stated that the sole purpose of the corporation was to create competition in the carriage of automobiles between Detroit and Milwaukee, although it was admitted that the corporation did not cause other than existing steamship facilities to enter the trade. Others asserted that the purpose of the corporation was to maintain a contact with automobile shippers who, during the winter, patronized W. and M. in the service between Milwaukee and Muskegon.

It is admitted that W. and M. secured no revenue from the transportation of automobiles via the all-water route and that A. D. T. received fees on all automobiles shipped over that route on W. and M. bills of lading whether or not they were solicited by Browne. During Browne's illness for about two months, employees of W. and M. did the soliciting of automobiles although A. D. T. collected fees for the tonnage thus originated.

It is clear from the foregoing that A. D. T. was neither a common carrier, a forwarder, nor a bona fide soliciting agent. It was a dummy corporation promoted by officers and agents of W. and M. through which certain shippers who were owners of stock were given rebates in the form of stock dividends as an inducement to ship over W. and M. The practice enabled such shippers to secure transportation at rates less than the rates which would otherwise apply,

unjustly discriminated against shippers who were required to pay the regular tariff rate for the same service, and constituted unfair competition with other carriers engaged in the same trade.

On September 13, 1937, Great Lakes carriers, including a representative of W. and M., reached an understanding or agreement to increase the rate on automobiles from Detroit to Milwaukee from \$12 to \$15 per automobile. Although the increased rate went into effect on October 1, 1937, no agreement or understanding was filed with the Commission as required by section 15 of the Shipping Act, 1916.

According to affidavits filed by Spence after the hearing, A. D. T. has surrendered its charter, refunded all payments for stock, and all dividend payments have been returned by the stockholders to W. and M. It is urged, therefore, that, without admitting any violation of law, if the action of respondent should be deemed unlawful, the situation has been rectified by leaving all parties as though no corporation had been formed. While this action restores the status quo of all parties involved, it does not correct the injury to competing shippers or to competing steamship lines. The record is convincing that respondents' officers proceeded without due regard to the provisions of the Shipping Act, 1916. The Commission regards any such form or device by which any part of the freight rate paid for transportation is refunded to shippers as a violation of law which cannot be too strongly condemned.

We find that payments to shippers of automobiles by W. and M. through A. D. T. was an unjust device or means to obtain transportation of property by water at less than the rates or charges which would otherwise apply and was unduly preferential in violation of section 16 of the Shipping Act, 1916. We further find that this form of rebate is not a deferred rebate within the purview of section 14 of the act. We further find that failure to file for approval, pursuant to section 15, the agreement between W. and M. and Great Lakes Transit providing for the carriage of automobiles between Detroit and Milwaukee during 1935 and 1936, as well as the understanding or agreement arrived at by the Great Lakes carriers providing for increased rates on automobiles between Detroit and Milwaukee, effective October 1, 1937, resulted in a violation of that section.

Since the A. D. T. is no longer in existence, payments made for stock have been refunded, rebates made in the form of dividends have been repaid, and the practices found to be unlawful have been discontinued, orders for the future are unnecessary. An order discontinuing the proceeding will be entered without prejudice to rights of parties in any subsequent proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 7th day of July, A. D. 1938.

No. 457

IN RE LAWFULNESS OF PAYMENTS TO SHIPPERS BY WISCONSIN & MICHIGAN STEAMSHIP COMPANY THROUGH AUTOMOTIVE DEALERS' TRANSPORT COMPANY.

It appearing, That on October 1, 1937, the Commission entered an order in the above-entitled proceeding, instituting a proceeding of investigation into and concerning the lawfulness of respondents' payments, refunds, or remittances, to certain persons of their lawful rates and charges in consideration for the giving of all or a portion of such persons' shipments of automobiles to respondents, and assigning this proceeding for hearing;

It further appearing, That such investigation and hearing having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions 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, without prejudice to any decision or finding which may be made in any subsequent proceeding.

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 July 13, 1938. Decided August 17, 1938

Agreement regulating competition found detrimental to the commerce of the United States.

Herman Phleger and *James S. Moore, Jr.*, for Matson Navigation Company, Matson Navigation Corporation, Ltd., and Oceanic Steamship Company.

Keith R. Ferguson for the Robert Dollar Company, Dollar Steamship Line, American Mail Line, Ltd., and Dollar Steamship Lines, Inc., Ltd.

Ralph H. Hallett and *David E. Scoll* for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding was instituted to determine whether approval heretofore given, under Section 15 of the Shipping Act, 1916, to an agreement dated April 23, 1930, between the Dollar interests and the Matson interests, concerning their Hawaiian and trans-Pacific trade, should be continued. A proposed report was issued to which exceptions were filed by Matson and the case was orally argued. Our conclusions differ in some respects from those recommended in that report.

Under the terms of the agreement, Matson has agreed not to engage in service between mainland ports of the United States and ports in Asia, the Philippine Islands, or Guam, except for cruise ships to the Orient and the now discontinued Oceanic and Oriental service. It has also agreed not to act as agent for any steamship company operating to the Orient. Dollar has agreed that, while continuing Honolulu, T. H., as a way port of call on voyages to the Far East,

it would neither solicit Hawaiian traffic nor act as agent for any line in such service, and that it would not engage in service between Continental United States and Australia, New Zealand, Fiji, or Samoa. Dollar has further agreed to act as agent for Matson for all Hawaiian traffic carried in its vessels, except what it handles for Matson at its request, to observe Matson's tariffs, as minima, and to pay Matson 50 percent of its gross receipts on Hawaiian business. The agreement is to remain in effect until April 23, 1940, and thereafter until such time as a majority of arbiters appointed under it shall decide that the necessity therefor has ceased to exist. The parties also have agreed to assist each other in the respective trades in which they operate.

When this agreement was entered into, there were five American flag lines operating between Pacific coast ports of the United States and Hawaii: Matson's service to and from Puget Sound and California ports; the Los Angeles Steamship Company to and from California ports; the Oceanic Steamship Company, owned by Matson, calling at Hawaii en route to and from Australasian ports; the Oceanic and Oriental Navigation Company, in which Matson owned a one-half interest; and Dollar, which stopped at Honolulu in its trans-Pacific and round-the-world services. The vessels of the Canadian Australasian Line and the Canadian Pacific also stopped at Honolulu en route from Vancouver, B. C., to their respective foreign ports of destination.

In 1931, the Los Angeles Steamship Company was merged with Matson, and in 1937 the Oceanic and Oriental service was discontinued, so that, at the present time, excepting occasional tramp service, Dollar is Matson's only American flag competitor from the Pacific coast. The Canadian Australasian and Canadian Pacific lines are still in operation. These lines draw a part of their passenger traffic from points along the border in the United States. However, both of them together carried only 10,148 and 10,144 passengers, respectively, to and from Hawaii during the period from 1930 to 1936, inclusive.

The round-the-world service of Dollar was inaugurated in 1924 with fortnightly sailings westbound beginning and terminating at San Francisco. Dollar's trans-Pacific service between San Francisco and ports in Japan, China, and the Philippine Islands was inaugurated in 1926. Passenger vessels operated by Dollar's principal foreign-flag competitors stop at the Hawaiian Islands. Because the Islands are attractive to passengers, doubtless some of the long-haul business would be lost to Dollar if it did not make this stop. Naturally, it also accepts such traffic to and from Honolulu as is offered and for which space is available.

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 eight sailings from San Francisco and six from Los Angeles, each month, and a triweekly service from Puget Sound. 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 carries over 98 percent of the freight to and from Hawaii and U. S. Pacific coast ports. Its dominant position in the trade has been fostered by extensive advertising, the establishment of modern hotels and recreational facilities on the Islands, and, in no small degree, by its intercorporate relations with the principal Island commercial interests who control the production and shipment of sugar and pineapples, the principal products of Hawaii. Directors of Matson are either directors or officers of other Hawaiian interests and vice versa.

During the first 11 months of 1937, Matson carried 18,446 persons to and 18,134 persons from the Islands. In the same period, it transported 806,164 tons of cargo westbound, including 200,878 tons of lumber; and 933,843 tons of cargo eastbound, including 545,237 tons of raw sugar, 7,045 tons of refined sugar, 249,165 tons of pineapples, and 82,927 tons of molasses in bulk. Dollar carries some traffic to and from the Islands, but in the seven years from June 1930 to October 1937 it carried only 11,107 passengers to Hawaii and 9,102 passengers on return voyages to the Pacific coast. In the same period, it carried 64,289 tons of cargo to the Islands from the mainland, and 6,347 back. It carried 98 passengers and 5,686 tons of cargo during this 7-year period at the request of Matson. The record does not show the amount of freight carried by the Canadian lines to and from Hawaii and Vancouver, but, according to Matson's own exhibits, the largest number of passengers carried by either of these lines in any one year was 3,220 passengers by the Canadian Australasian Line in 1936 and this appears to have been an unusually large number for this line.

In July 1929 Matson put into operation a direct San Francisco-Manila service which offered serious competition to Dollar's slower

service via Japan and China, for which the latter held an ocean-mail contract. In explanation of this competition, Matson's witness stated that the company was merely endeavoring to serve Hawaiian interests which had acquired an interest in sugar production in the Philippines, although no corroborative evidence was introduced to prove this assertion. Matson made application to have its direct route certified for an ocean-mail contract under title IV of the Merchant Marine Act, 1928. Certification was granted over the protest of Dollar who, to protect itself, inaugurated a parallel direct service. Before the final date for submitting ocean-mail bids, the agreement under consideration was entered into and the direct Manila service withdrawn. Neither of the parties submitted ocean-mail bids, and it is evident that such a service could not have been profitably operated without a subsidy. The events which surround the making of the agreement thus contradict Matson's subsequent explanation, and, under the circumstances, it would appear that Matson's direct Manila service was intended only as a threat to Dollar.

Matson admits that Dollar's payments of 50 percent of its gross revenues was designed to make the Hawaiian business unattractive, and this is further evidenced by the fact that while the freight and passenger rates established by Matson, which Dollar had to comply with under the agreement, have not been appreciably increased since the agreement went into effect, operating costs have gone up considerably. The rates on general cargo remained constant from 1926 to 1937, being changed in the latter year from \$5.75 per ton to \$6.75 per ton. Passenger fares were decreased from 1932 to 1935 and were then restored to the 1930 level. On the other hand, it was stated that since the maritime strike in 1934, operating costs of combination passenger and freight vessels in this trade have increased approximately 35 percent and stevedoring costs have increased 100 percent. These increases affected alike both Dollar and Matson.

While the agreement provides that Dollar shall not solicit passenger or freight traffic between Pacific coast ports and the Hawaiian Islands, Dollar, being primarily interested in the long-haul traffic to the Orient and beyond, rather than in Hawaiian business, has never solicited such traffic. On the other hand, the Hawaiian trade is Matson's primary interest. The natural diversion of their spheres of operations has tended, therefore, to diminish competition between them. The agreement is a far-reaching attempt to continue this noncompetitive status in perpetuity. Paragraph (7) provides that—

This agreement shall remain in full force and effect for ten years from the date hereof, and thereafter until such time as a majority of the arbitrators

appointed as hereinabove provided, shall decide that the necessity therefor, or desirability of, this agreement, as measured by the conditions existing at the time it was made, shall have ceased to exist.

Both parties have thus signed away for all time their right to withdraw from the arrangement.

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 changed conditions on their undertakings.

In the present instance, both the situation of the parties and the conditions in the trade have altered considerably since 1930. Section 605 (c) of the Merchant Marine Act, 1936, as amended, by imposing restraints against the duplication of services by subsidized lines, takes away from the the parties their opportunity to compete with one another in their respective foreign services, thus destroying the underlying consideration for the agreement. Matson, furthermore, absorbed the one remaining competitor beside Dollar which operated in the Hawaiian-California trade. It has entered into agreements with other carriers, stabilizing the service to other United States ports. It has extended its control of Hawaiian traffic by increasing the number of its contracts with Island shippers. By effective advertising and extensive development of Hawaiian attractions, it has linked its name with the Island in the minds of the traveling public.

At the time the agreement was made, Dollar received ocean-mail pay under its contract route F. O. M. 25 with the Postmaster General based upon the distance from San Francisco to Manila via Honolulu. The mileage payments for the distance from San Francisco to Honolulu which Dollar received from the Post Office Department constituted a subsidy to Dollar not enjoyed by those Matson ships which ran only in the Hawaiian trade. However, this subsidy was withdrawn when the ocean-mail contracts were terminated by the Merchant Marine Act, 1936, therefore the necessity of payments from Dollar to offset this advantage no longer exists. The present subsidy which Dollar receives specifically eliminates any compensation on the San Francisco-Honolulu portion of its trans-Pacific service, in accordance with the provision of the Merchant Marine Act, 1936.

As pointed out in another part of this report, Matson offers as its reason for inaugurating the direct Manila route that it wanted to serve Hawaiian interests who were then interested in Philippine sugar production. Since that time, the record shows that such Hawaiian interests in the Philippines have diminished, and in addition, sugar imports from the Philippines have become restricted by

law, so that whatever opportunities of developing trade with the Philippines, which are allegedly given up by Matson in consideration for the agreement, have substantially disappeared.

As pointed out elsewhere, there is evidence from which the Commission may conclude that 50 percent of the gross tariffs which Dollar retains is not now compensatory for the Hawaiian voyage. As stated by the Department of Commerce in *Seas Shipping Co. v. American South African Line, Inc., et al.*, 1 U. S. S. B. B. 568, at 583:

If the existence of the agreement were the cause of the low rates the Department's course of action would be reasonably clear. Whatever their immediate effect, rates unremunerative or noncompensatory are in the long run detrimental to our commerce, for our commerce embraces not only cargo moving but the instrumentalities employed in moving such cargo. Both complainant and one of the defendants, American South African Line, are part of the American merchant marine, and section 1, Merchant Marine Act, 1920, contains an admonition that in the administration of the shipping laws there be kept always in view the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of an adequate privately owned merchant marine.

The evidence is conclusive and Matson admits that it has a monopoly of the United States Pacific coast-Hawaiian trade. In the regulation of Conference Agreements under section 15, the policy of both the United States Shipping Board and of the Department of Commerce was to discourage agreements which established a monopoly in favor of a competitor. *Eden Mining Company v. Bluefield Fruit & Steamship Co.*, 1 U. S. S. B. B. 41; *Intercoastal Rate on Silica Sand from Baltimore, Maryland*, 1 U. S. S. B. B. 373, 375; *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400; *Gulf Intercoastal Contract Rates*, 1 U. S. S. B. B. 524, 529. As stated in *Intercoastal Investigation 1935*, 1 U. S. S. B. B. 400, at 456—

The prohibition of discrimination means, among other things, that no difference or distinction shall be made in rates that coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business which under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor.

That section 15 confers authority to regulate competition between carriers in accordance with the needs of the service was stated by the U. S. Supreme Court in the case of *Swayne & Hoyt, Ltd., et al. v. United States*, 300 U. S. 297, 305:

* * * We think there was evidence from which the Secretary could reasonably conclude that there was little need for a contract rate system to assure stability of service. * * * On the other hand, there was substantial evidence from which the Secretary could infer that the contract rate system would tend to give to the Conference carriers a monopoly by excluding competition from new lines.

The agreement under consideration produces an effect in the Hawaiian trade which is closely analogous to that which the Department of Commerce declared was unlawful when it disapproved contract rates in the intercoastal trade: *Gulf Intercoastal Contract Rates, supra*. In the latter case, the respondents endeavored to shut out certain competitors through the medium of contract rates. In this case, Matson seeks to discourage its only competitor by exacting 50 percent of that competitor's gross revenue. The distinction, if any, is one of degree only.

We view the exemption granted by section 15 as a means of regulating competition in order to eliminate rate-cutting and other abuses which are harmful to shipper and carrier alike. Nothing in the record indicates that either of the parties ever threatened such abuses. On the contrary, it appears that Matson dominates the trade sufficiently to be able to discourage competition from any source. The argument that Canadian competition threatens the stability of the U. S. Pacific coast-Hawaiian service is a specious one. If the Canadian lines are a real threat to Matson service, the remedy lies in an agreement with them, rather than the one under consideration. Under the circumstances, the maintenance of an adequate and reliable steamship service between Hawaii and the Pacific coast does not depend upon the continuance of this agreement in its present form.

Dollar's witnesses uttered certain general statements and conclusions to the effect that Dollar is satisfied with the agreement. Upon this basis, Matson urges that the Commission should not modify or disapprove it. The mere fact that the parties are satisfied with an agreement vests no right to a continuance of approval. Whenever it appears to the Commission that approval is contrary to the public interest, it will be withdrawn. Respondents err in assuming that there is a presumption in their favor arising from the fact of approval, which can only be rebutted by an overwhelmingly proof of wrong-doing. When the Commission finds sufficient evidence upon which to base a judgment that continued performance of the agreement would be contrary to the provisions of the Shipping Act, it has a duty under the statute to disapprove the agreement notwithstanding a previous approval. It is of no particular consequence that the facts upon which disapproval is based existed at the time the agreement was approved or came into being later. If it were otherwise, it would be impossible for a carrier, shipper or port to prove that an agreement which had been approved by the Commission violated the provisions of the Shipping Act unless changed conditions could be shown.

The Commission finds that the agreement is detrimental to the commerce of the United States and in violation of section 15 of the Shipping Act, 1916, as amended. This finding is without prejudice to the right of the parties to file an agreement consistent with this decision for approval under section 15. An order cancelling Agreement No. 1253 and forbidding the parties from making further payments thereunder will be entered.

MORAN, *Commissioner*, dissenting:

The majority find the agreement in question violative of section 15 of the Shipping Act, 1916. As I read that section, it is violated only when parties carry out an agreement before it is approved or after it is disapproved by the Commission. The agreement here has been approved.

Of the various grounds set out in section 15 upon which we are to base our disapproval of an agreement, the majority select only one, namely, a finding of detriment to our commerce. So we may assume that the agreement is not unjustly discriminatory or unfair as between carriers, shippers, or ports, nor in violation of the act. At least there is no basis of record for a different assumption. Matson wants the agreement continued and Dollar testified it was a beneficial arrangement. No passenger, shipper, or representative of any shipping interests complained of the agreement, doubtless on account of the adequate service at reasonable rates shown of record to have resulted from such agreement.

I find great difficulty in following the reasoning of the majority to the conclusion that the agreement is detrimental to commerce, but it seems to be, (1) that there never was any reason for the agreement in the first instance or now, (2) that it has given Matson a monopoly in its trade, and (3) that it results in the dissipation of Dollar's revenue.

It is said Matson's Manila service was inaugurated merely as a threat, and then the astonishing statement is made that it wouldn't have been profitable any way. This speculation totally ignores the fact of record, which is omitted from the report, that Matson had completed eight voyages and the gross revenue thereon had increased from \$17,000 on the first voyage to \$54,000 on the last. It should be emphasized in this connection that the major consideration moving from Matson, namely, its withdrawal from the Oriental trade, was rendered immediately, and its position in such trade, given up in reliance upon the agreement, cannot now be restored.

The majority conclude that the agreement establishes a monopoly in favor of Matson and therefore is detrimental to commerce. Matson's monopoly, if any, was there before the agreement was made, and disapproval of the agreement will not remove it. This so-called mo-

nopoly has none of the obnoxious features condemned in the cases cited in the report. There is no coercion of the public to employ Matson's services to the exclusion of those of Dollar. Furthermore, Dollar does not and has never solicited the Hawaiian trade. But there is no monopoly—Matson does not control all the traffic, and cannot so long as the competition of Canadian lines is present. Granting, however, there is—monopolies regulated under the shipping laws is one of the most important principles underlying section 15. Therefore the "monopoly" cannot be detrimental here.

Then, is the alleged dissipation of Dollar's revenue detrimental to commerce? Admittedly, noncompensatory rates are indirectly detrimental to our commerce, for they weaken the instrumentalities employed therein. The report, in stating that Dollar's share of the revenue is noncompensatory, brushes aside the unmentioned fact of record that the amount retained by Dollar from freight and passenger revenue respectively covers the cost of loading and unloading cargo, and the cost of carrying passengers. A pertinent question here is: How much did the consideration which Dollar received for this contribution of 50 percent strengthen it in the Oriental trade? The record shows, but the report does not reveal, that Dollar has received \$33,133.57 on traffic carried at Matson's request, and \$7,031.65 on account of local passengers to the Orient on Matson's cruise vessels. In addition, Dollar admits that, through Matson's influence, it has secured a passenger business between Manila and Honolulu said to have resulted in substantial amounts; also freight business attributed to cooperative acts on the part of Matson produces in excess of \$100,000 annually. If speculation is in order: How much of this business could Matson deprive Dollar of if it chose to enter into transshipping agreements with foreign lines which it refrains from doing pursuant to the agreement? Certainly, the strength of Dollar's position in its trade would not have been enhanced if Matson had elected to remain therein as a competitor. Whether Dollar's position on the whole is better or worse for the agreement is one of those imponderable questions to which the record offers no accurate solution. Dollar's continued acquiescence in the agreement, and the undoubted advantages of the arrangement convince me that there are no grounds, at least upon this record, to condemn it as being detrimental to Dollar.

Far from being detrimental to our commerce, the agreement, in my judgment, has been beneficial. Commerce is best served by frequent, dependable, and adequate service at reasonable rates. The facts of record make it abundantly clear that the effect of the agreement has been the maintenance of an improved service, through the elimination of ruinous competition, in the respective trade areas served by

Dollar and Matson, and there is no complaint as to the reasonableness of their rates. It is to be assumed that when the agreement was approved in 1930 it was not detrimental to commerce. In the entire absence of any showing of substantially changed conditions or circumstances since then, and in the absence of complaint from any source regarding the propriety of the agreement, we are not justified now, in my opinion, in reaching a different conclusion.

I agree with the conclusion of the report in respect to paragraph (7) of the agreement.

I am authorized to state that COMMISSIONER WILEY concurs in this dissent.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 17th day of August A. D. 1938.

No. 465

IN THE MATTER OF DOLLAR-MATSON AGREEMENTS NOS. 1253 AND
1253-1

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 Agreement No. 1253, as amended, be, and it is hereby disapproved, and the parties thereto are hereby forbidden from making further payments thereunder.

By the Commission.

[SEAL]

(Signed) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 485

INTERCOASTAL JOINT RATES VIA ON-CARRIERS

Submitted September 8, 1938. Decided September 9, 1938

Schedules proposing changes in application of through routes and joint rates for intercoastal transportation of freight from Atlantic to Pacific coast ports not justified. Suspended schedules ordered cancelled and proceeding discontinued, without prejudice to the filing of new schedules in conformity with the views expressed herein.

M. G. deQuevedo for Intercoastal Steamship Freight Association carriers, except Isthmian Steamship Company, and for Luckenbach Gulf Steamship Company, Inc.; *E. J. Karr* for Calmar Steamship Corporation; *F. E. Lovejoy* for Puget Sound Freight Lines, Puget Sound Navigation Company, Skagit River Trading & Transportation Company, and Border Line Transportation Company; *Allan P. Matthew* and *F. W. Mielke* for California Transportation Company and Sacramento & San Joaquin River Lines, Inc.; *W. G. Westman* for Crowley Launch & Tugboat Company; *C. L. Meek* for Bay Cities Transportation Company, respondents.

H. S. Brown and *W. M. Carney* for Intercoastal Steamship Freight Association; *William C. McCulloch* for Port of Vancouver, Wash.; *Ralph L. Sheperd* for Portland Traffic Association; *Markell C. Baer* for Board of Port Commissioners, Port of Oakland, Calif.; *W. G. Stone* for Sacramento Chamber of Commerce, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by respondents, members of the Intercoastal Steamship Freight Association, other than Isthmian Steamship Company, to the report proposed by the examiner. The findings recommended by the examiner are adopted herein.

By schedules filed to become effective May 11, 1938, respondents¹ proposed to change by qualification their existing schedules governing the application of through routes and joint rates provided therein for the intercoastal transportation of freight from Atlantic to Pacific coast ports. By its order of May 10, 1938, the Commission suspended the operation of the proposed schedules until September 11, 1938.

Respondent canal lines transship Atlantic coast cargo destined to Pacific coast ports other than their principal Pacific coast terminal ports at such latter ports under through route and joint rate arrangements with river and other on-carriers. In some instances, cargo destined to an intercoastal terminal port is transshipped under like arrangement with an on-carrier. Both of the suspended schedules involving these transshipments² consist of a rule providing that—

Joint through rates named in this tariff are applicable only when the route of the participating on-carrier is available. If such route is not available, charges will be collected on basis of the rate of the initial carrier to the port of transshipment, and cargo will be held at such port for disposition by consignor, consignee, or the owner of the goods, as the case may be. All charges accruing after discharge of the goods at the port of transshipment shall be for account of cargo.

Respondent canal lines concede that the wording of the rule is open to improvement for purposes of clarification. By the word "route" as used therein is meant service. They express willingness to amendment of the rule to definitely provide that on-carrier service will not be deemed unavailable without notice to that effect. They explain that in the event the rule is operative the charges which would be assessed and the rules and regulations determining the assessment of such charges would be those applicable under the tariff at the transshipment port as for cargo billed and destined thereto. These charges, rules and regulations might be different from those applicable at the original destination port. They assert that the proposed rule would not become operative in any instance until at least

¹ American-Hawaiian S. S. Co., (Arrow Line) Sudden & Christenson, Babbidge & Holt, Inc., Bay Cities Transportation Co., Berkeley Transportation Co., Border Line Transportation Co., California Eastern Line, Inc., California Transportation Co., Calmar S. S. Corporation, Christenson-Hammond Line, Coastwise Line, Consolidated-Olympic Line, Crowley Launch & Tugboat Co., Dollar S. S. Lines, Inc. Ltd., Erikson Navigation Co., Panama Mail S. S. Co., Isthmian S. S. Co., A. B. Johnson Lumber Co., Luckenbach Gulf S. S. Co., Inc., Luckenbach S. S. Co., Inc., McCormick S. S. Co., Marine Service Corporation, Northland Transportation Co., Pacific Coast Direct Line, Inc., Panama Pacific Line, Puget Sound Navigation Co., Puget Sound Freight Lines, Pacific-Atlantic S. S. Co., Richmond Navigation & Improvement Co., Roamer Tug & Lighterage Co., Sacramento & San Joaquin River Lines, Inc., Schafer Bros. S. S. Lines, Shaver Forwarding Co., Skagit River Navigation & Trading Co., States S. S. Co., Sudden & Christenson.

² Designated Joseph A. Wells', Alternate Agent, Third and Fourth Amended Pages No. 75 to SB-I No. 6, and Calmar Steamship Corporation Second Amended Page No. 112 to SB-I No. 5.

the expiration of the free-time period applicable at the transshipment port. This free-time period might be different from that applicable at the original destination port. Their position is that in the interest of shippers they intend the rule for application without free-time restriction, so that more than the free-time period applicable at the transshipment port could be extended by them in any given case which might seem to warrant extension.

These respondents explain that the purpose of the suspended schedules is to obviate loss of revenue by them and difficulties which they expect to encounter due to strikes and strike conditions, to on-carrier vessel accident or breakdown, abandonment of service by an on-carrier, or other similar on-carrier circumstance. Their position is that the schedules prescribe a rule for automatic rather than optional application, to be used by them in emergency situations only. They direct attention to provisions of somewhat similar import in the form of liability clauses contained in their bills of lading and in the bills of lading of other carriers, and to their inherent right of embargo. They show interruptions to various of the transshipment services involved, due to stevedore and other strikes, as having occurred from May 8 to July 28, 1934, December 1 to December 14, 1934, December 5, 1934 to January 2, 1935, on May 1, 1935, from July 2 to October 4, 1935, November 7 to December 10, 1935, December 3, 1935 to April 20, 1936, October 25, 1936 to February 8, 1937, and from October 29, 1936 to February 24, 1937. During these periods, and during additional interruptions due to strike conditions, Atlantic coast cargo was forwarded from the transshipment port to destination at the expense of the canal carrier by truck or rail at rates higher than the on-carrier division of the through joint rate. In some instances consignees took delivery of their cargo at the transshipment port. Through-route transportation of Atlantic coast cargo to San Diego by transshipment at Los Angeles Harbor was discontinued in 1936, due to labor difficulties of on-carriers. This discontinuance was effected by schedule cancellations pursuant to the Commission's tariff regulations.

At the hearing no opposition to the suspended schedules was presented. Chamber of Commerce representatives appearing as witnesses described them as unobjectionable, reasonable, and fair, considering emergency transshipment problems likely to be met. Further testimony of such representatives and on behalf of on-carriers was that no shipper objections thereto had come to their knowledge, and that through route and joint rate transportation in the qualified manner provided for by the schedules would be more desirable than if no through routes and joint rates existed. On brief the Port of Oakland, Calif., states the position that on-carriage of intercoastal

cargo to shallow-water ports, such as Sacramento, Calif., at the rate applicable to San Francisco is unlawful under the Intercoastal Shipping Act, and, as the suspended schedules are in effect amendatory of existing schedules providing such rates, they and the schedules they propose to modify should be ordered cancelled. This intervenor states, however, that it offers no objection to the suspended schedules *per se*, and that as such they are meritorious. The lawfulness of on-carriage to shallow-water ports is not in issue in this proceeding.

The suspended schedules manifestly do not publish with desirable certainty the rates which under all circumstances would be applicable, in that in the event of interruption to on-carrier service the consignor's or consignee's transportation cost to the port of original destination would be more than the through joint rate provided for by the tariff. It is equally manifest, however, that the existing through routes and joint rates are to be accepted as beneficial to the shipping public, and that by the suspended schedules respondents are endeavoring to preserve the utmost of such service consistent with economy of management. Public hearing for the purpose, among other things, of recording reaction to the schedules by the shipping public which pays the transportation cost was duly conducted at Seattle, Wash., Portland, Ore., San Francisco and Los Angeles, Calif., and at New York, N. Y. Although the hearing at such places was widely publicized, as indicated above no objection to the schedules was voiced by anyone of the description referred to. Upon the instant record the continued maintenance of the through routes and joint rates concerned, subject to such interruptions as may be due to on-carrier strikes, vessel accident or breakdown, and other similar strictly emergency on-carrier situations, is in the public interest.

It does not follow, however, that the suspended schedules have been justified. They do not specify that the charges to be assessed and the rules and regulations determining such charges are those applicable at the port of transshipment. They contain no reference to free time, notwithstanding respondents' intention that periods comparable in character to free time are to elapse between arrival of the cargo at the transshipment port and assessment of storage or other terminal charges. In both of these respects the schedules fail to comply with the requirement of section 2 of the Intercoastal Shipping Act, 1933, that schedules shall specify all terminal or other charges, privileges allowed, and any rules or regulations which change, affect, or determine the charges or the value of the service rendered. Further, under respondents' interpretation of the schedules in connection with free time, the allowance of different periods

as between different consignees would effect inequality of treatment as between shippers and permit undue preference and prejudice in violation of section 16 of the Shipping Act, 1916. Additionally, under respondents' interpretation the schedules would be operative in the event of abandonment of on-carrier service for any reason, although such schedules are proposed to meet emergency situations. Testimony on behalf of canal respondents contains general assertions of "disappearance" of on-carriers "over-night," and assumptions that during the voyage of a canal carrier to the Pacific coast on-carriers "will decide to go out of business." Upon the record the reality as an emergency situation of discontinuance by an on-carrier of its business enterprise is not shown; nor is it apparent why such discontinuance, generally infrequent and foreknowledge, cannot be made by cancellation of the particular through route and joint rates in the normal manner prescribed by our tariff regulations. The schedules should provide for notice to consignee, or the person to whom notice of arrival would be issued in the event the goods were delivered at the billed destination, of interrupted on-carrier service due to on-carrier strike, vessel accident or breakdown, or other similar on-carrier emergency situation, and that the goods will be held for disposition by him at the transshipment port.

A revision of the rule concerned which would remove the objections instanced above and carry out, as far as may be, the purpose of respondents, is as follows:

Through joint rates named in this tariff are applicable except when service of the participating on-carrier has, due to strike, vessel accident or breakdown, or other similar emergency situation, been interrupted. In the event of such interruption the consignee, or the person to whom notice of arrival would be issued in the event the goods were delivered at the billed destination, will be mailed arrival notice in which specific reference will be made to the existence of the on-carrier emergency situation and to this rule, and upon expiration of the free-time period applicable to cargo billed to the transshipment port as final destination the goods will be held at the transshipment port for disposition by the consignee, consignor, or owner thereof, as the case may be. Rates, charges, rules and regulations applicable to such goods will be those applicable under this tariff to cargo billed to the transshipment port as final destination.

We find that the suspended schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding, without prejudice to the filing of new schedules in conformity with the views expressed herein.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 9th day of September A. D. 1938

No. 485

INTERCOASTAL JOINT RATES VIA ON-CARRIERS

It appearing, That by order of May 10, 1938, the Commission entered upon a hearing concerning the lawfulness of the regulations and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until September 11, 1938;

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 September 11, 1938, 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, as amended, and that this proceeding be discontinued.

By the Commission.

[SEAL]

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

UNITED STATES MARITIME COMMISSION

No. 338

AMES HARRIS NEVILLE COMPANY ET AL.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.¹

Submitted April 20, 1938. Decided August 5, 1938

Any-quantity rate on cotton piece goods and cotton factory products from Atlantic and Gulf ports to Pacific ports not shown to be unduly prejudicial or unreasonable. Complaint dismissed.

F. A. Jones, V. O. Conaway, and Benjamin S. Cooper for complainants and interveners except American Cotton Manufacturers Association and Cannon Mills Company.

Joseph J. Geary and M. G. de Quevedo for defendants except Isthmian Steamship Company and Nelson Steamship Company.

James A. Russell for Nelson Steamship Company.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainants' exceptions to the examiner's proposed report on further hearing were not seasonably filed and were rejected. Our conclusions are those recommended by the examiner in that report.

Complainants and interveners are dealers, manufacturers, jobbers, wholesalers, and distributors of cotton piece goods and cotton factory products.

The complaint alleges that defendants' any-quantity rate on cotton piece goods and cotton factory products, hereinafter referred to as cotton piece goods, from Atlantic and Gulf ports to Pacific ports is

¹American Line Steamship Corporation, The Atlantic Transport Company of West Virginia, Calmar Steamship Corporation, Dollar Steamship Lines, Inc., Ltd., Gulf Pacific Mail Line, Ltd., Isthmian Steamship Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., McCormick Steamship Company, Nelson Steamship Company (not operating), Pacific-Atlantic Steamship Co. (Quaker Line), Panama Mail Steamship Company (Grace Line), States Steamship Co. (California-Eastern Line), Sudden & Christenson (Arrow Line), Swayne & Hoyt, Ltd. (Gulf Pacific Line), Weyerhaeuser Steamship Co. (Pacific Coast Direct Line, Inc.), Williams Steamship Corp. (now dissolved).

unduly prejudicial and unreasonable in violation of sections 16 and 18 of the Shipping Act, 1916, as amended. Rates will be stated in amounts per 100 pounds.

In lieu of the assailed any-quantity rate of 90 cents,² complainants originally sought a carload rate of 65 cents, minimum weight 24,000 pounds, and a less-than-carload rate of \$1.15. In their brief on further hearing, they suggest a carload rate of 75 cents, preferably 70 cents, minimum weight 24,000 pounds, with a spread of not less than 25 cents below the contemporaneous less-than-carload rate. They do not contend that the assailed any-quantity rate when applied to less-than-carload shipments is unduly prejudicial or unreasonable.

In his proposed report on the original hearing, the examiner concluded that no undue prejudice had been shown to exist, to which no exception was taken by complainants. He also recommended that the any-quantity rate of 90 cents be found unreasonable, and that for the future, rates of 75 cents, carload minimum 24,000 pounds, and \$1.15 for less-than-carload quantities be prescribed as reasonable maxima. American Cotton Manufacturers Association, representing a membership of more than 700 textile mills, and Cannon Mills Company, an operator of 20 plants, intervened and filed exceptions. Also, thirteen of the seventeen defendants excepted and petitioned for a further hearing which was granted.

From January 1, 1935, through October 2 of that year defendants' rates on cotton piece goods were on a carload and less-than-carload basis.³ Complainants compare the increases on cotton piece goods on October 3, 1935, with the increases on other commodities which prior to that date were accorded the same less-than-carload rate of 87.5 cents. The average increase in the less-than-carload rates was 20 cents, and the carload rates 2.5 cents. The 90-cent any-quantity rate on cotton piece goods represents an increase of 16.13 percent over the former carload rate, and 2.85 percent over the former less-than-carload rate, whereas increases on 569 other rate items averaged 6.03 percent over the carload, and 15.04 percent over the less-than-carload rates. On all commodities accorded carload rates from 60 to 68 cents, minimum weight 24,000 pounds, the average increase in carload rates effective October 3, 1935, was 1.6 percent, and in less-than-carload rates, 22.2 percent, as compared with the 16.13 percent and 2.85 percent increases, respectively, on cotton piece goods.

The 50-cent spread between the carload rate of 65 cents, and less-than-carload rate of \$1.15 originally sought by complainants, would provide a carload rate 56.5 percent of the less-than-carload rate.

² Increased to 95 cents, effective June 15, 1937.

³ Carload 75 cents, minimum weight 10,000 pounds; less-than-carload 87.5 cents.

Complainants compare these rates and the difference of 50 cents with the average spread of 70.5 cents and the percentage relation of 47.6 percent between carload and less-than-carload rates on all items accorded carload rates ranging from 60 to 69 cents with the same minimum weight. A summary of all items with 24,000 pounds minimum shows an average spread of 68 cents between carload and less-than-carload rates and an average percentage, carload of less-than-carload rates, of 55.7 percent. Other evidence shows an average spread of 80 cents or a ratio of 53.8 percent between all carload and less-than-carload rates. The any-quantity rate of 90 cents is, with one exception, lower than each less-than-carload rate exhibited by complainant.

The measure of defendants' rate on cotton piece goods is dependent to a considerable extent upon those maintained by transcontinental rail lines having rail-and-water routes, as their competition is directly with those lines. All-rail rates from principal producing centers in New England and the South are \$1.925, minimum weight 24,000 pounds, and \$3.515 less-than-carload. The most important competitive rates are those of \$1.63, same minimum, and \$3.515 less-than-carload for water-rail service jointly maintained by the Morgan Line and the Southern Pacific Railroad Company and by the Clyde-Mallory Line in conjunction with the Atchison, Topeka & Santa Fe Railroad. The Morgan Line's service is approximately 10 and 11 days from New York, and slightly less from South Atlantic ports, to Los Angeles and San Francisco as against 21 and 22 days via the intercoastal lines. Defendants also are in competition with several consolidators who maintain on cotton piece goods rates of \$1.90 to Los Angeles and \$2.00 to San Francisco from North and South Atlantic ports, including store-door delivery, marine insurance, and all terminal costs. The greater portion of the cotton piece goods which defendants carry originates at distances ranging from 150 to 300 miles from the ports, and must bear, in addition to their rates, the cost of transportation to the port, insurance, wharfage, and other charges. At defendants' calculation, the cost of shipping cotton piece goods from South Atlantic ports via intercoastal lines to store door in Los Angeles approximates \$1.47.

Defendants' analysis of complainants' exhibit comparing the assailed rate with rates on various commodities shows the latter rates are depressed because of competitive conditions. When cost of transportation to and from the ports, insurance, wharfage, and other charges are added to the intercoastal rates, it is apparent the latter are intended to meet carrier competition or to enable shippers located near the ports to move their traffic in competition with producers closer to the consuming points.

The usual basis of rate publication in steamship operation is an amount per cubic foot or per 100 pounds, whichever produces the higher revenue to the carrier. Other than in the coastwise and inter-coastal trades, no instance is disclosed where rates are published by steamship companies on the carload and less-than-carload basis. Defendants stress that in water transportation a shipper of a carload quantity of cotton piece goods does not load nor does the consignee discharge the cargo, as in railroad transportation where loading by the shipper and unloading by the consignee justify in part a difference between carload and less-than-carload rates. According to defendants, their stevedoring cost is on a per-ton basis and it makes no difference whether a shipment consists of 10 tons or 1 ton, so far as the carrier's stevedoring cost per ton is concerned.

Most of the cotton piece goods moving over defendants' lines is in small quantities. For example, during the first 9 months of 1935 the Atlantic defendants, except two lines, carried 50,274 shipments aggregating 28,377,877 pounds and averaging 564 pounds each; and 807 carload shipments, weighing 19,902,129 pounds, averaging 24,661 pounds each. In the same period in 1936 there were 67,203 shipments aggregating 44,227,396 pounds and averaging 658 pounds, as compared with 227 shipments, totalling 8,952,622 pounds, of more than 24,000 pounds each. The fact of this movement of cotton piece goods in small quantities is highly important in relation to complainants' exhaustive comparisons with commodities to which carload and less-than-carload rates apply. It is well established that on certain classes of traffic, where the prevailing shipping quantity is small, any-quantity rates rest upon sound public policy in that they counteract a tendency toward monopoly by enabling the small shipper to compete on equal terms with powerful competitors. Under such circumstances the Shipping Act does not require maintenance by carriers of rates predicated upon a quantity condition which most shippers are not prepared to meet, and the fact that carload quantities are offered for shipment does not furnish ground for attributing unlawfulness to the any-quantity rate applied thereto.

In addition to the undue prejudice which complainants allege results from defendants applying the same rate on large as on small consignments of cotton piece goods, complainants contend that such rate is unduly prejudicial when compared with defendants' carload rate of 65 cents, minimum weight 24,000 pounds, on paper towels and toweling. Their evidence on this point is addressed to showing that the use of cotton toweling in office buildings, railroad stations, and other public places is being steadily displaced by paper toweling.

The record is persuasive that the rate on paper toweling is influenced by rail competition; furthermore, that factors other than the cost of transportation, such as the relative cheapness of paper toweling, and restrictions on the use of the "common" towel may reasonably account for the substitution of cotton toweling by paper toweling.

Upon this record we find that the any-quantity rate assailed has not been shown to be unduly prejudicial in violation of section 16 of the Shipping Act, 1916, as amended, or unreasonable in violation of section 18 of that act. The complaint will be dismissed.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 5th day of August, A. D. 1938

No. 338

AMES HARRIS NEVILLE COMPANY ET AL.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

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 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,
Asst. Secretary.

UNITED STATES MARITIME COMMISSION

No. 476

WEST-BOUND INTERCOASTAL RATES—ATLANTIC PORTS TO VANCOUVER,
WASHINGTON

Submitted August 27, 1938. Decided August 29, 1938.

Proposed cancellation of intercoastal through routes and joint rates to Vancouver, Wash. justified. Suspension orders vacated and proceeding discontinued.

M. G. deQuevedo for Intercoastal Steamship Freight Association carriers, except Isthmian Steamship Company, respondents.

Wm. C. McCulloch, T. A. MacComber, F. G. Pender, for Port of Vancouver, Wash., protestant.

Philip H. Carroll for Pacific Coast Association of Port Authorities; *Ernest Gribble* for Pacific Coast Association of Port Authorities and Northwest Rivers & Harbors Congress; *R. D. Lytle*, for North Pacific Millers' Association, and *Ralph L. Shepherd* for Portland Traffic Association, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by protestant Port of Vancouver, Wash. The findings recommended by the examiner are adopted herein. Protestant's request for oral argument before the Commission is denied.

By schedules filed to become effective April 30, 1938, and later, respondents¹ proposed to cancel their through routes and joint rates

¹ American Hawaiian S. S. Co. (Arrow Line) Sudden & Christenson, Babbidge & Hoyt, Inc., Bay Cities Transportation Co., Border Line Transportation Co., California Eastern Line, Inc., California Transportation Co., Calmar S. S. Corp., Christenson-Hammond Line Coastwise Line, Consolidated-Olympic Line, Crowley Launch & Tugboat Co., Dollar S. S. Lines, Inc., Ltd., Erikson Navigation Co., Freighters, Inc., Panama Mail S. S. Co., Isthmian S. S. Co., A. B. Johnson Lumber Co., Luckenbach Gulf S. S. Co., Inc., Luckenbach S. S. Co., Inc., McCormick S. S. Co., Marine Service Corp., Northland Transportation Co., Pacific Coast Direct Line, Inc., Panama-Pacific Line, Puget Sound Navigation Co., Puget Sound Freight Lines, Pacific-Atlantic S. S. Co., Richmond Navigation & Improvement Co., Roamer-Tug & Lighterage Co., Sacramento & San Joaquin River Lines, Inc., Shafer Bros. S. S. Lines, Shaver Forwarding Co., Skagit River Navigation & Trading Co., States S. S. Co., Sudden & Christenson.

for transportation of freight from Atlantic coast ports to Vancouver, Wash. Upon protest by the Port of Vancouver, the operation of the schedules was suspended until August 30, 1938.

Under existing schedules on file, service to Vancouver is provided for by respondent canal carriers direct, or by respondent canal lines and respondent on-carriers by transshipment at Portland, Oreg., or other Pacific coast ports, at rates which are the same in amount as those applicable to Portland and other Pacific coast terminal ports. If the cancelations become effective, Vancouver cargo from Atlantic coast will be discharged by respondent canal lines at Portland and there held for further transportation to Vancouver at the expense of consignee, consignor, or owner of the cargo, as the case may be.

From January 1, 1936 through May 1938, 11 respondent canal lines carried a total of 1,212 tons of cargo from Atlantic coast destined Vancouver. Of this tonnage respondent American-Hawaiian carried 739 tons, of which approximately 206 tons transported on three different voyages were consigned to a paper bag company which has since removed from Vancouver. In the fiscal year ended June 30, 1937, a total of 13 tons of miscellaneous cargo was discharged by direct call of respondent canal lines at Vancouver. During the 6 months ended December 31, 1937, 377.4 tons of Atlantic coast cargo were transshipped on the Pacific coast to that port, or an average for the 10 transporting canal lines of 37.7 tons. The largest amount of this cargo on any one voyage was 91.2 tons transshipped at Portland on August 4, 1937, which was consigned to the paper bag company above referred to, and the smallest amount was 27 pounds. The volume of west-bound cargo to Vancouver from Atlantic coast does not warrant the shifting of canal vessels from Portland to that port, and practically all of such cargo is accordingly transshipped. Indication is that in the past some west-bound Vancouver cargo was transshipped by canal respondents at Pacific coast ports other than Portland. As of the present time, however, there is no evidence of any movement of transshipped Vancouver cargo except through Portland.

On direct calls on east-bound voyages during 1934, 1935, and 1936, the tonnages of cargo lifted by canal lines at Vancouver for Atlantic coast were 6,002, 28,359, and 19,463, respectively. For the fiscal year ended June 30, 1937, 27,997 tons were loaded by canal respondents at that port for Atlantic coast destinations. Some of these direct calls were at lumber wharves, a mile or more distant from the Vancouver general cargo terminals. Upon arrival of canal respondents' vessels at Portland west-bound cargo is discharged, whence their vessels proceed to Puget Sound ports where they are

completely discharged and east-bound loading is begun. They then return to Columbia River where east-bound loading is continued. This order of procedure and variations thereof, distinguishing between west-bound discharge and east-bound loading, are testified by all witnesses for respondent canal lines to be required by their schedules and by operating conditions, and to make it impracticable for them to discharge west-bound cargo at Vancouver at the time east-bound cargo is there loaded.

Transshipping arrangements between respondent canal lines and the respondent barge carriers operating out of Portland at through joint rates were first entered into in the latter part of 1934, at the request of the barge carriers, with the expectation of increased tonnage to Vancouver. During the last several years, however, the amount of such tonnage has declined and operating costs have steadily increased to the point where, according to one canal respondent, the transshipping cost has in many cases equaled the revenue received for the carriage from the Atlantic coast. The testimony of each of the witnesses of the canal respondents is to the effect that developments have proved the transshipping arrangements to have been ill-advised and unprofitable.

Numerous instances are shown where Vancouver consignees have elected to take delivery at Portland and transport their cargo by truck at their own expense to their places of business. Some have given standing orders that their shipments be delivered to them by the canal lines at Portland. The expense to consignee of this truck store-door delivery is slightly more than the expense of trucking the cargo from the Vancouver terminals, and the delay to their shipments incident to transshipment is obviated. This truck haul from Portland to Vancouver is approximately 8 miles as compared with the barge distance of from 14 to 16 miles. No Vancouver consignees appeared at the hearing.

The two barge on-carriers operating out of Portland² pick up and transport Vancouver cargo upon call of the canal respondents. A minimum of 20 tons of cargo is said to be necessary to make profitable the operation of a barge trip from Portland to Vancouver. Due to the small amount of west-bound Vancouver cargo, the barge operators rarely transport such cargo by barge. Practically all of it is forwarded by them in hired trucks at the barge lines' expense. The barge on-carriers' stevedore and boatmen expenses have doubled during the past 4 years, and wages paid by them to navigators and engine-room personnel have increased from 30 to 40 percent in the last 3 years. Both on-carriers are faced also

² Shaver Forwarding Co. and The Columbia Tugboat Co. (Roamer Tug & Lighthouse Co.).
1 U. S. M. C.

with other increased operating costs since the transshipping arrangements with the canal lines were entered into, and demonstrate that in view of the Vancouver tonnage decline, the west-bound transshipment service is conducted by them at a loss.

Protestant port of Vancouver shows that it is a deep-water port with modern and ample marine terminal facilities. On intercoastal west-bound cargo moving over its wharves it collects a minimum wharfage charge of 50 cents per ton and other charges for transfer and storage. Protestant does not dispute that the west-bound intercoastal tonnage is insufficient to justify calls by the respondent canal lines at its terminals, nor any of the facts presented by respondents respecting the small volume of west-bound cargo as a whole, respondents' increased operating costs, and their lack of profit. Its position is that as respondents voluntarily established the existing through routes and joint rates to Vancouver they should not, because of unsatisfactory volume of cargo and lack of profit thereon, be permitted to discontinue the service. Its objection to the suspended schedules is in no particular predicated upon the fact that they propose discontinuance in one direction only. Discontinuance to Vancouver and continuance to other ports, protestant urges, would subject it to undue prejudice and unreasonableness in violation of sections 16 and 18 of the Shipping Act 1916, as amended. Cargo or other conditions at the other ports alluded to are not shown. Protestant's testimony is that Vancouver, although in another State, is really a suburb of Portland, and that in connection with west-bound intercoastal traffic it is not in any substantial competition with Portland; nor is any competition by Vancouver with any other port claimed. No facts bearing upon unreasonableness in the event the suspended schedules become effective are presented by protestant.

Protestant requests us to order permanent cancelation of the suspended schedules, without prejudice to filing by respondents of new schedules effecting horizontal increases in present rates to Vancouver, Portland, Seattle, San Francisco and other Pacific coast ports, together with appropriate pooling as between the canal respondents of existing traffic and services west-bound to Vancouver. No facts are furnished by it, however, as a basis for increased rates to the other ports referred to, or as respects the various origins of west-bound Vancouver cargo at Atlantic ports separately served by the respondent canal lines.

Upon brief the canal respondents question our jurisdiction under any circumstances to order cancelation of the suspended schedules involved in this proceeding. Their argument in this relation refers to the absence of any provision in the Shipping Act, 1916, as

amended, similar to paragraph 18 of section 1 of the Interstate Commerce Act.³ Notwithstanding such absence, pertinent provisions of the Shipping Act to which respondents are amenable are absolute. For example, section 16 of 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.

In the instant proceeding no facts are disclosed which tend to prove that the proposed discontinuance of rates or services will result in undue or unreasonable prejudice and disadvantage. The record amply supports respondents' position that cancelation of the through routes and joint rates to Vancouver concerned are justified.

We find that respondents' schedules have been justified. An order will be entered vacating the orders of suspension and discontinuing this proceeding.

³ Making unlawful the abandonment of existing rail transportation service unless and until authorized by the Interstate Commerce Commission.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 29th day of August A. D. 1938

No. 476

WEST-BOUND INTERCOASTAL RATES—ATLANTIC PORTS TO VANCOUVER,
WASHINGTON

It appearing, That by its orders of February 25, 1938, March 8, 1938, and April 26, 1938, the Commission entered upon a hearing concerning the lawfulness of regulations and practices enumerated and described in said orders, and suspended the operation of said schedules until August 30, 1938;

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, and has found that the schedules under suspension have been justified;

It is ordered, That the orders heretofore entered in this proceeding suspending the operation of said schedules be, and they are hereby, vacated and set aside as of this date, 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. 495

IN THE MATTER OF AGREEMENT NO. 6510

Submitted August 22, 1938. Decided November 3, 1938

Agreement as submitted not true and complete as required by section 15. Approval withheld unless and until supplemented in accordance with views herein expressed.

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.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding was instituted by the Commission on its own motion to determine whether Agreement No. 6510, dated June 17, 1938, between the members of the Intercoastal Steamship Freight Association, on the one hand, and members of the Gulf Intercoastal Conference, on the other, should be approved under section 15 of the Shipping Act, 1916. With minor exceptions, this agreement is identical with Agreement No. 5630 between the same parties, approved January 9, 1937, which expired July 9, 1938. A term of 1 year is provided, with privilege of renewal, such renewal to be approved under section 15.

Mississippi Valley Barge Line Co., and Inland Waterways Corporation intervened at the hearing.

The agreement establishes procedure for keeping each group of carriers informed of the changes which the other proposes to make in its rates, rules, and regulations. Objections may be filed by one group to changes proposed by the other, to be considered at joint

meetings of representatives of each group. The representatives of each group then report to their conference, and the group proposing the changes then takes such action as their judgment dictates, with like freedom in the opposing group to determine whether they will make similar changes. It is further provided that either group may request a meeting to consider matters of dispute involving the general policies of the two groups. The purpose of this arrangement is to maintain, wherever practicable, simultaneous publication of the same port-to-port rate by each group on all intercoastal traffic including such terminal practices, rules, and regulations at ports served by each group as will insure harmony of rates.

Under paragraph 7 an imaginary line is drawn beginning at Michigan City, Ind., and ending at Cincinnati, Ohio. Territory east of the line is deemed to be naturally tributary to ports served by the Atlantic port group, and territory west of the line is deemed to be naturally tributary to Gulf ports. Points on the line and, as to steel sheets only, Middletown, Ironton, and Portsmouth, Ohio, and Ashland, Ky., adjacent to the line, are designated as common to both groups. It is agreed that traffic originating south and southeast of Cincinnati shall flow through its natural port as determined by the applicable inland "rail-rate" structure. Applicants state this line depicts, generally, the line which, at the time the first agreement was entered into, represented a natural division of territory as between Atlantic and Gulf port groups because of the then existing inland rate structure; that from experience during the existence of Agreement No. 5630 the natural flow of traffic was not materially affected; and that under the subject agreement no reason exists to believe there will be a different effect in the future than in the past.

At a hearing held at New Orleans in May 1937 upon complaint of Inland Waterways Corporation regarding Agreement No. 5630, in which the Mississippi Valley Barge Line Co. intervened, stipulations as to the interpretation to be placed upon the agreement were entered into stating, in part, that—

(1) There should be a parity of rates, wherever practicable, as between Gulf and Atlantic ports, and that there should be no adjustment of defendants' port-to-port rates, which would disturb the flow of merchandise through the cheapest gateway considering the rail rates, the rail-barge or barge rates from and to Gulf ports, so long as the latter rates are maintained on the customary relation to corresponding all-rail rates;

(2) Gulf lines may establish rail-barge-ocean or barge-ocean rates necessary to meet transcontinental rail competition when there is a bona fide movement to or from the territory naturally tributary to Gulf ports, notwithstanding such rates might incidentally draw tonnage from a territory declared to be naturally tributary to Atlantic ports.

The complaint was thereupon withdrawn, and the proceeding dismissed. *Inland Waterways Corporation v. Intercoastal Steamship*

Freight Association et al., 1 U. S. M. C. 653. Applicants state the subject agreement is to be interpreted in the same manner as the prior agreement.

Interveners are fearful the agreement as drawn will adversely affect their stated right to traffic to and from points naturally tributary to routes established by them; and that through the equalization of inland rates by the shrinkage of port-to-port rates by Atlantic port carriers it will operate to prevent their participation in traffic on through routes at joint rates established in connection with Gulf applicants. They also object to the concluding sentence of paragraph 7 relating to traffic south and southeast of Cincinnati, concerning which applicants agree the flow to the ports shall be governed by the applicable "rail-rate" structure, contending that consideration should be given to barge and rail-barge rates when maintained on the recognized standard differential basis under all-rail rates. Their objections, in effect, are that the agreement is not specific enough, and does not sufficiently restrict competition between the two groups of carriers. Applicants' witnesses take the position they were not authorized to change the language of the agreement in any respect. They state interveners should view the agreement in the light of what has transpired in the past and that in the absence of any showing that it has operated unfairly to them no reason exists which will warrant disapproval. There is nothing to prevent shippers from selecting the carrier they wish to patronize or the route by which their shipments shall move, irrespective of their location. Interveners present their objections solely through counsel with no factual evidence to show that the prior agreement has been or that the subject agreement, if approved, will be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters of the United States and their foreign competitors, or that it will operate to the detriment of the commerce of the United States, or otherwise be in violation of the act.

Paragraph 8 provides that—

No rates, rules, or regulations shall be made by either party to this agreement to draw traffic originating from or destined to territory herein deemed to be tributary to the ports served by the other party.

By the above stipulation numbered (2) there is freedom in Gulf carriers to establish joint rates with inland carriers to meet transcontinental rail competition. It is conceivable that such competition may exist both to and from points east of the imaginary line and south of Cincinnati. The stipulation, therefore, operates as an exception to paragraph 8 and is in conflict therewith. The record also indicates, notwithstanding the first stipulation hereinbefore set forth, a reluctance on the part of applicants in respect to points south and

southeast of Cincinnati to accord equal recognition to rail, rail-barge, and barge rates, if such rates reflect established differentials, when considering port-to-port rate adjustments. A somewhat similar situation exists in respect to points in territory allotted to each group. The stipulation however is specifically stated to reflect the manner in which the agreement will be interpreted. The stipulation is thus in conflict with the agreement.

Under the circumstances here outlined, there appears little, if any, benefit to either group in the establishment of the imaginary line. An agreement for parity of rates with proper restrictions against reductions designed to equalize inland rates to and from competitive ports may have a stabilizing influence in that such agreements tend to prevent unwise and disastrous rate-cutting practices. But all such agreements should be complete, especially as to matters of substance, and the language used should be so clear as to eliminate all necessity for any interpretation as to the intent thereof.

We find that the agreement dated June 17, 1938, to which has been assigned Agreement No. 6510, does not reflect the true and complete agreement of the parties as required by section 15. It therefore will not be approved but the record will be held open for 60 days to permit the parties to file a new agreement which will record the complete agreement and intention of the parties.

1 U. S. M. C.

UNITED STATES MARITIME COMMISSION

No. 469

LEATHER SUPPLY CO., INC., AND MAX SCHECHTER, DOING BUSINESS AS
SUPREME STOOL COMPANY

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted October 8, 1938. Decided November 10, 1938

Rate on artificial or imitation leather properly applied on pyroxylin coated cotton cloth finished to simulate leather. Complaint dismissed.

Arthur H. Glanz and Clarence E. Avey for complainants.

M. G. de Quevedo for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainants to the examiner's proposed report. The findings recommended by the examiner are adopted herein.

By complaint filed December 30, 1937, it is alleged that between December 9, 1935, and September 21, 1936, on shipments of coated cotton fabrics from Philadelphia, Pa., to Los Angeles Harbor and San Francisco, Calif., defendant assessed the rate of \$1.90 per 100 pounds applicable on artificial or imitation leather instead of the rate of 90 cents per 100 pounds applicable on pyroxylin coated cotton cloth, in violation of section 18 of the Shipping Act, 1916, and of section 2 of the Intercoastal Shipping Act, 1933. There is neither allegation nor proof that the rate of \$1.90 was unreasonable or prejudicial. Reparation is asked. Rates will be stated in amounts per 100 pounds.

During the period referred to in the complaint, pyroxylin coated cotton cloth was one of a number of commodities classified as "Dry Goods" in Item 800 of defendant's tariff, the rate thereon being 90 cents. Contemporaneously, artificial or imitation leather, not rubberized or rubber coated fabric, was one of several commodities com-

prising Item 846 of the tariff, the rate thereon being \$1.90. Effective December 20, 1936, pyroxylin coated cotton cloth was eliminated from Item 800 and transferred to Item 846 at the \$1.90 rate.

The commodity which is the subject of this proceeding is cotton cloth coated with a chemical compound called pyroxylin. Metal plates are impressed onto the coating before it has hardened to produce the effect of leather grain. Known in the trade as leather fabric, it is obtainable in various colors, weights, and qualities, and competes with leather. Complainants' attorney admitted that the fabric looks like imitation leather, and samples introduced in evidence by him unmistakably have the appearance of leather. The bills of lading covering the shipments, prepared by defendant from information furnished by the shipper, describe the commodity as artificial leather. Samples of pyroxylin coated cotton cloth, used in the manufacture of luggage, were introduced in evidence by defendant to demonstrate the general type of material embraced within the tariff classification of that commodity. These samples differ materially from, and could not be confused with, artificial or imitation leather. Complainants' attorney recognizes "that shower curtains, tablecloths, window curtains, and a number of other commodities in everyday use are generally pyroxylin coated for waterproofing and various other purposes to increase their durability."

Generically, the material involved is pyroxylin coated cotton cloth, but the fact that it is further processed to give the effect of leather removes it from the general classification and subjects it to the rate applicable on artificial or imitation leather.

On this record complainants have failed to show that the commodity shipped was improperly classified. 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 10th day of November A. D. 1938

No. 469

LEATHER SUPPLY CO., INC., AND MAX SCHECHTER, DOING BUSINESS AS
SUPREME STOOL COMPANY

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 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.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 436

DANT & RUSSELL, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.¹

Submitted April 25, 1938. Decided November 10, 1938

Defendants' rates on pressed wood insulating board from Portland, Oreg., to Atlantic and Gulf ports of the United States found not unreasonable or unduly prejudicial. Complaint dismissed.

William P. Ellis for complainant.

M. G. de Quevedo and *W. M. Carney* for defendants other than Isthmian Steamship Company, Swayne & Hoyt, Ltd., and Gulf Pacific Mail Line, Ltd.

Joseph J. Geary for defendants Swayne & Hoyt, Ltd., and Gulf Pacific Mail Line, Ltd.

Thomas L. Philips for The Celotex Corporation, intervener.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by defendants other than Isthmian Steamship Company and by intervener to the report proposed by the examiner; complainant replied, and the case was orally argued. Our conclusions differ from those recommended by the examiner.

By complaint filed April 19, 1937, complainant, a corporation selling wallboard, under the trade name "Fir-Tex," alleges that de-

¹ American-Hawaiian Steamship Company; (Arrow Line) Sudden & Christenson; (Calmar Line) Calmar Steamship Corporation; Dollar Steamship Lines, Inc., Ltd.; (Grace Line) Panama Mail Steamship Company; Isthmian Steamship Company; Luckenbach Steamship Company, Inc.; McCormick Steamship Company; (Panama Pacific Line) American Line Steamship Corporation and The Atlantic Transport Company of West Virginia; (Quaker Line) Pacific-Atlantic Steamship Co.; States Steamship Company (California-Eastern Line); and Weyerhaeuser Steamship Company, in the Pacific-Atlantic trade; and Gulf Pacific Mail Line, Ltd.; Luckenbach Gulf Steamship Company, Inc.; and Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line), in the Pacific-Gulf trade.

defendants' owner's risk carload rates on pressed wood insulating board, hereinafter called wallboard, from Portland, Oreg., to Atlantic and Gulf ports of the United States of 60 cents and 62 cents per 100 pounds respectively, minimum 24,000 pounds, were and are unduly prejudicial and unreasonable in violation of sections 16 and 18, respectively, of the Shipping Act, 1916. A rate of 40 cents for the future and reparation are sought. The Celotex Corporation intervened after the hearing.

Complainant's wallboard is manufactured from wood pulp, the wood being sawmill refuse and second growth forest wood. It is marketed throughout the United States at \$33 per thousand square feet of 1/2-inch board in competition with eastern wallboards, particularly wallboard from New Orleans, selling at the same prices. The eastern States are the heaviest consumers of wallboard. From 1934 to 1936, inclusive, shipments of wallboard from New Orleans to Atlantic ports ranged from 13,374 tons to 23,701 tons per year while, during the same period, complainant's shipments to the same ports were from 69 tons to 854 tons per year.

Complainant's evidence of unreasonableness is based on comparisons of the westbound intercoastal rates on wallboard and the eastbound intercoastal rate on wood pulp board from Portland to Atlantic ports. At the time of hearing defendants' westbound owner's risk carload rate on wallboard was 45 cents, minimum 40,000 pounds, and their carrier's risk rate was 50 cents, minimum 40,000 pounds. Complainant urges that there are no material differences in transportation of wallboard westbound compared with eastbound traffic, and, therefore, that the eastbound rate should be no higher than that westbound, stressing the point that the volume moving eastbound is greater than that westbound. There are no figures of record showing the westbound tonnage but it was shown that wallboard moves from New Orleans to the Pacific coast. Complainant also showed that defendants' tariffs provide for application of westbound rates on commodities moving eastbound where no eastbound rates are provided. It assails the publishing of rates on wallboard under the trade name "Fir-Tex", in the absence of which the westbound rate on wallboard would apply to the eastbound movement. It offered examples of various commodities regularly moving eastbound and westbound at the same rates. Transcontinental rail rates on wallboard moving east or west are the same except that to certain territories the eastbound rail rates are lower.

Defendants assert that the westbound rate was established for the movement of wallboard manufactured at Lockport, N. Y., which is not competitive with complainant's product, and also claim that the

westbound rate is depressed. It was testified by their witness that this rate is contained in the Pacific-Atlantic lines' roofing item, and that the rates in that item were originally made, and still are, on a competitive basis with the all-rail rate on roofing from Cincinnati, Ohio, which is 90 cents. They asserted that wallboard at one time was included in the all-rail roofing item and is there now for mixed-carload purposes, the straight-carload rate being 91 cents. They stated further that the low rate from New Orleans was established to meet an all-water rate from Cincinnati.

Comparison is made by defendants of the revenue yielded by the assailed rates with the revenue from the principal commodities moving from Portland to Atlantic and Gulf ports. These commodities are canned goods, hides and skins, wheat, flour, dried fruits, wool, lumber, and paper. The rates on these commodities, the minimum weights not appearing of record, range from 32.5 cents, free of in-and-out expense, for wheat, to \$1.10 for wool. Stowage factors range from 41 cubic feet per net ton for wheat to 166 cubic feet per net ton for wool, and the revenue per cubic foot therefrom ranges from 11.6 cents per cubic foot on lumber to 26.6 cents per cubic foot on dried fruits. Wallboard stows from 119 to 122 cubic feet per ton and yields about 10 cents per cubic foot. The volume of movement of the commodities named by defendants for the fiscal year ended June 30, 1936, as shown in the record, ranged from 514 gross tons of canned fish to 210,898 gross tons of lumber and logs.

Recognizing the relatively low revenue yielded by the rates, particularly as compared with a revenue of 11.6 cents per cubic foot on lumber, and after giving due consideration to the comparability of the westbound 45-cent rate on wallboard, particularly the lack of an appreciable volume of movement thereunder and the influence of rail competition affecting its establishment, and upon the record as a whole, we are unable to find that the assailed rates are unreasonable.

The allegation of undue prejudice is not supported by any evidence that the lower westbound rates have injured complainant's business.

We find that the rates assailed have not been shown to be unreasonable or unduly prejudicial. An appropriate 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 10th day of November A. D. 1938

No. 436

DANT & RUSSELL, 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.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 447

TRI-STATE WHEAT TRANSPORTATION COUNCIL AND FARM RATE COUNCIL

v.

ALAMEDA TRANSPORTATION CO., INC., ET AL.¹

Submitted April 25, 1938. Decided November 10, 1938

Rate applicable to intercoastal transportation of bulk wheat found unreasonable but not unduly prejudicial or preferential. Reasonable maximum rate prescribed. Rules and regulations in connection with such transportation not shown to be unlawful.

Arthur M. Geary for complainants.

Ralph L. Shepherd and *William C. McCulloch* for interveners.

M. G. de Quevedo and *Joseph J. Geary* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by interveners and defendants and complainants replied. One intervener

¹ Alameda Transportation Co., Inc.; American-Hawaiian Steamship Company; America Transportation Co.; (Arrow Line) Sudden & Christenson; Babbidge & Holt, Inc.; Bay Cities Transportation Company; Border Line Transportation Company; California Steamship Company; The California Transportation Company; Chamberlin Steamship Co., Ltd.; Christenson-Hammond Line (Hammond Shipping Company, Ltd., Managing Agents); Crowley Launch & Tugboat Co.; Dollar Steamship Lines, Inc., Ltd.; Erikson Navigation Company; Freighters, Inc.; (Grace Line) Panama Mail Steamship Company; Havside Company (eliminated from tariff); Isthmian Steamship Company; A. B. Johnson Lumber Co.; Jones Towboat Company; Luckenbach Gulf Steamship Company, Inc.; Luckenbach Steamship Company, Inc.; McCormick Steamship Company; Marine Service Corporation; Northland Transportation Company; Pacific Steamship Lines, Ltd. (The Admiral Line); (Panama Pacific Line) American Line S. S. Corp., The Atlantic Transport Co. of West Virginia; Puget Sound Freight Lines; Puget Sound Navigation Company; (Quaker Line) Pacific-Atlantic Steamship Co.; Richmond Navigation & Imp. Co.; Roamer Tug & Lighterage Company; Sacramento & San Joaquin River Lines, Inc.; Schafer Brothers Steamship Lines; Shaver Forwarding Company; San Diego-San Francisco Steamship Co.; Skagit River Navigation & Trading Company; States Steamship Company (California-Eastern Line); Sudden & Christenson; Weyerhaeuser S. S. Co., Inc.; Shepard Steamship Company; Calmar Steamship Corporation; Bulk Carriers Corporation (service discontinued); Gulf Pacific Mail Line, Ltd.; Los Angeles Steamship Company; Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line); The River Lines (Operated by the California Transportation Company and the Sacramento & San Joaquin River Lines, Inc.).

and defendants orally argued the case. Our conclusions differ in some respects from those recommended by the examiner.

Complainants, associations of wheat growers and shippers in Washington, Oregon, Idaho, and Montana, allege by complaint filed July 12, 1937, as amended, that defendants' rates, charges, rules and regulations on grain moving from Pacific ports to Atlantic and Gulf ports are unreasonable, in violation of section 18, unduly prejudicial to grain growers and shippers, and unduly preferential to flour and flour shippers, in violation of sections 16 and 17 of the Shipping Act, 1916, as amended. Lawful rates, charges, rules and regulations are sought. Section 17 concerns foreign commerce, and is without application in this proceeding.

North Pacific Millers' Association and Portland Traffic Association intervened in the interest of having the same rates prevail on wheat as on flour.

Wheat moves intercoastally in a large steady volume in individual shipments of as much as 2,500 tons. The total movement in the fiscal year 1936 amounted to approximately 100,000 tons from the Pacific Northwest to Atlantic and Gulf ports, 10 to 15 percent of which was sacked wheat sold as feed. Wheat is shipped both in bulk and in bags.

The time required for loading bulk wheat at Portland, Oreg., ranges from 200 to 600 tons per hour per hatch, in contrast with 22 tons an hour for general cargo including flour. The rate of discharge of bulk wheat at Atlantic ports ranges from 300 tons per day per hatch to 15,000 bushels an hour.

Generally, the assailed rates are \$6.50 per net ton on bulk wheat, minimum 500 tons, and 41 cents per 100 pounds, on bagged wheat, minimum 50,000 pounds, effective in June 1937. After the complaint was filed Shepard increased its rates, which were then \$5 on bulk wheat and 30 cents on bagged wheat, to \$6.50 and 40 cents, respectively, effective July 17, 1937. Loading, trimming, and discharging expenses are for account of cargo, and the owner stands the risk of damage, shrinkage, deterioration, sweat, or decay. The shipper furnishes cloth if separation of bulk wheat is desired. The rate on bulk wheat is "free in and out," the shipper paying the cost of loading and unloading.

Complainants contend that because they are obliged to bear the expense of loading and unloading bulk wheat, the rate should be reduced sufficiently to reflect such expense. They urge that since the carrier bears such expense, estimated to be \$1.80 per ton, in connection with flour, on which the rate is \$6.60 per ton, the rate on bulk wheat should be \$6.60 less \$1.80, or \$4.80. The reasonableness of the flour rate is demonstrated, according to complainant, by the fact

that it is not competitively depressed and is properly adjusted to the industry, having been applied on about 296,000 tons of flour shipped in the fiscal year 1936. Complaint points out that the increases on bulk wheat in June and July 1937 amounted to 18 percent, whereas those on flour amounted to only 10 percent.

Defendants urge that no reduction is justified by the fact that handling expenses are borne by the shipper inasmuch as they are more than offset by the extra costs of the special service accorded bulk wheat. The transportation is from private mills to private elevators, characterized by defendants as a service from and to shipper's and receiver's "own back yards." Extraordinary expenses incurred in the carriage of bulk wheat include cost of lining the hold of the vessel, shifting vessels between their regular berths and private elevators, which necessitates extra pilotage charges, overtime in handling general cargo to permit shifting, the shifting of other cargo to load wheat with due regard to the stability and safety of the vessel, loss of time at ports, cleaning the hold, and fumigation of vessels because of weevils. Losses are occasionally incurred by shippers' last-minute cancellation of options for space. The following tabulation illustrates the range of these items of expense, in so far as they appear of record, and their application to a minimum quantity of 500 tons of bulk wheat:

Lining hold (21-30 cents ton)-----	\$105	\$150
Pilotage (\$10-\$80)-----	10	60
Travel time grain gang-----	2	2
Running lines-----	10	10
Cleaning hold (16 cents ton)-----	80	80
Fumigating (16 cents ton)-----	--	80
Shifting and pilotage at destination (\$10-\$250)-----	10	250
	217	632

These costs, on a per ton basis, range from 43 cents to \$1.26. Defendants, upon exceptions, refer to numerous other items of expense not shown of record, a few of which may be allocable to carriers' cost of transporting wheat, but most of which are also incurred in the carriage of general cargo. They submit that in view of the diversified operations of defendants it is difficult if not impossible to allocate, with any degree of certainty, the exact cost of performing the service accorded bulk wheat.

The following table is a comparison of the assailed rates with rates on principal commodities moving in volume in the eastbound inter-coastal trade prepared from evidence submitted by the defendants from which they argue that the earnings on bulk wheat are too low when compared with the revenues yielded by the other commodities:

Commodity	Value ¹	Rate	Stevedoring (loading) ²	Stowage factor	Gross revenue
	<i>Per ton of 2,000 pounds</i>	<i>Per ton of 2,000 pounds</i>		<i>Cubic feet per ton</i>	<i>Per cubic foot</i>
Wheat, bulk.....	\$36.00	\$6.50	(³)	42	\$0.155
Wheat, sacked.....		8.20		50	.164
Lumber.....	23.50	9.32	\$1.00	80	.1165
Wood pulp.....	34-57.00	6.50	1.25	50	.1300
Flour.....	57.84	6.60	1.00	50	.132
Wrapping paper.....	132.50	11.30	2.00	70	.161
Printing paper.....	556.00	23.60	2.00	145	.163
Canned goods.....	96.60	11.30	1.30	85	.174
Dried beans.....	153.52	11.40	1.25	55	.207
Dried fruit.....		11.40	1.40	55	.207
Green hides.....		13.60	1.40 ⁴	50	.272
	204.62	11.00	1.25	40	.275

¹ The value of wheat is the average of exhibited prices received by farmers at local markets in Washington, Oregon, Idaho, and Montana for the first 7 months of 1937. Values of other commodities are from complainants' exhibit of freight revenue and value of commodities transported on class 1 steam railways in the United States, calendar year 1933.

² Stevedoring rates for discharging not shown of record.

³ Shippers' expense.

⁴ Increased to \$7.00 per net ton effective Aug. 31, 1938.

⁵ Testified to be unduly depressed by rail competition.

In connection with defendants' contention that they offer a "special" service in the carriage of bulk wheat it should be noted that the private mills and elevators served are named in their tariffs, and thus are their regular berths for loading and discharging wheat. The shifting of defendants' vessels to pick up or unload general cargo is not an uncommon practice. (See Alternate Agent Wells' Eastbound Tariff SB-I, No. 7, page 158 ff.) Particularly, this is true as to lumber which is loaded at many berths in small quantities and discharged in like manner. *Eastbound Transportation of Lumber, etc.*, 1 U. S. M. C. 646.

Wheat is substantially less valuable than flour. While it is impossible to determine from the record the cost of the respective services accorded the two commodities, it appears reasonably certain that it costs less to transport bulk wheat than it does flour. Considering all the facts of record including the comparisons of other rates on principal commodities with somewhat similar transportation characteristics, moving in the eastbound trade, as illustrated in the above table, we conclude that a rate of \$6 per net ton would be a maximum reasonable rate on bulk wheat in minimum quantities of 500 tons. In view of the recent increase in the rate on flour, and the fact that the reasonableness of the \$6.60 rate on flour is not in issue, it should be understood that we are not here prescribing a differential of \$.60 per net ton between bulk wheat and flour.

The basis of complainants' allegation that the existing relationship between the rates on flour and bulk wheat is prejudicial to the latter commodity is not clear. The extent of competition, if any, between the commodities is not demonstrated, and there is no proof that the rate situation has in any manner operated to complainants'

disadvantage in marketing wheat. Intervening flour interests contend that rates on wheat and flour should be on an exact parity because a lower rate on wheat would enable southeastern mills to secure northwestern wheat and market the flour at a price advantage over flour from the northwest. But, as stated in *Gulf Westbound Intercoastal Soya Bean Oil Meal Rates*, 1 U. S. S. B. B. 554, 560, we have no authority to adjust rates primarily to protect an industry from domestic competition.

There is relatively little evidence bearing upon the lawfulness of the rate on sacked wheat. Sacked wheat is not competitive with bulk wheat, and the volume of its movement is slight compared with that of flour and bulk wheat. We are not prepared on this record to condemn as unlawful the rate on sacked wheat.

Complainants on brief advocate no change in the present rules and regulations applicable on wheat, except for a suggested minor correction of Item 514 of Agent Williams' Eastbound Tariff SB-I, No. 3, which permits the vessel to unload on overtime at ship's discretion and shipper's expense. There is testimony that this creates uncertainties as to shipper's costs, and discrimination against bulk wheat, since "other commodities on the ship probably may and could be discharged on straight time." But there is no evidence that the rule operates to unduly prefer or prejudice any person, locality, or description of traffic.

We find that the assailed rules and regulations applicable to transportation of wheat and the assailed rate on sacked wheat have not been shown to be unlawful; that the rate assailed on bulk wheat is not unduly and unreasonably prejudicial and preferential in violation of section 16 of the Shipping Act, 1916, as amended, but is and will be unjust and unreasonable in violation of section 18 to the extent it exceeds or may exceed \$6 per net ton, minimum 500 net tons. 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 November, A. D. 1938

No. 447

TRI-STATE WHEAT TRANSPORTATION COUNCIL AND FARM RATE COUNCIL

v.

ALAMEDA TRANSPORTATION CO., INC.; AMERICAN-HAWAIIAN STEAMSHIP COMPANY; AMERICA TRANSPORTATION CO.; (ARROW LINE) SIDDEN & CHRISTENSON; BABBIDGE & HOLT, INC.; BAY CITIES TRANSPORTATION COMPANY; BORDER LINE TRANSPORTATION COMPANY; CALIFORNIA STEAMSHIP COMPANY; THE CALIFORNIA TRANSPORTATION COMPANY; CHAMBERLIN STEAMSHIP CO., LTD.; CHRISTENSON-HAMMOND LINE (HAMMOND SHIPPING COMPANY, LTD., MANAGING AGENTS); CROWLEY LAUNCH & TUGBOAT CO.; DOLLAR STEAMSHIP LINES, INC., LTD.; ERIKSON NAVIGATION COMPANY; FREIGHTERS, INC.; (GRACE LINE) PANAMA MAIL STEAMSHIP COMPANY; ISTHMIAN STEAMSHIP COMPANY; A. B. JOHNSON LUMBER CO.; JONES TOWBOAT COMPANY; LUCKENBACH GULF STEAMSHIP COMPANY, INC.; LUCKENBACH STEAMSHIP COMPANY, INC.; McCORMICK STEAMSHIP COMPANY; MARINE SERVICE CORPORATION; NORTHLAND TRANSPORTATION COMPANY; PACIFIC STEAMSHIP LINES, LTD. (THE ADMIRAL LINE); (PANAMA PACIFIC LINE) AMERICAN LINE S. S. CORP.; THE ATLANTIC TRANSPORT CO. OF WEST VIRGINIA; PUGET SOUND FREIGHT LINES; PUGET SOUND NAVIGATION COMPANY; (QUAKER LINE) PACIFIC-ATLANTIC STEAMSHIP CO.; RICHMOND NAVIGATION & IMP. CO.; ROAMER TUG & LIGHTERAGE COMPANY; SACRAMENTO & SAN JOAQUIN RIVER LINES, INC.; SCHAFER BROTHERS STEAMSHIP LINES; SHAVER FORWARDING COMPANY; SAN DIEGO-SAN FRANCISCO STEAMSHIP CO.; SKAGIT RIVER NAVIGATION & TRADING COMPANY; STATES STEAMSHIP COMPANY (CALIFORNIA-EASTERN LINE); SIDDEN & CHRISTENSON; WEYERHAEUSER S. S. CO. INC.; SHEPARD STEAMSHIP COMPANY; CALMAR STEAMSHIP CORPORATION; GULF PACIFIC MAIL LINE, LTD.; LOS ANGELES STEAMSHIP COMPANY; SWAYNE & HOYT, LTD., MANAGING OWNERS, (GULF PACIFIC LINE); THE RIVER LINES (OPERATED BY THE CALIFORNIA TRANSPORTATION COMPANY AND THE SACRAMENTO & SAN JOAQUIN RIVER LINES, INC.)

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full

investigation of the matters and things involved having been had, and the 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 be, and they are hereby, notified and required to cease and desist, on or before December 31, 1938, and thereafter to abstain from publishing, demanding, or collecting for the transportation of wheat in bulk, minimum 500 net tons, from ports on the Pacific Coast of the United States to ports on the Gulf and Atlantic coasts of the United States, a rate in excess of \$6.00 per net ton.

By the Commission.

[SEAL]

(Sgd.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 448

THE CELOTEX CORPORATION

v.

MOOREMACK GULF LINES, INC., AND PAN-ATLANTIC STEAMSHIP
CORPORATION

Submitted July 20, 1938. Decided November 17, 1938

Rates on wallboard from New Orleans, La., to Atlantic ports found unreasonable but not otherwise unlawful. Rates for the future prescribed.

Rates on scrap paper from Atlantic ports to New Orleans found not unreasonable or otherwise unlawful.

Thomas L. Philips and *William V. Webb* for complainant.

S. D. Piper and *J. H. Rauhman* for interveners on behalf of complainant.

Robert E. Quirk for defendants.

Arthur E. D'Herete and *Harry McCall* for interveners on behalf of defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION :

Exceptions were filed by complainant and defendants to the report proposed by the examiner. Defendants replied and the case was orally argued. Our conclusions differ somewhat from those of the examiner.

Complainant manufactures wallboard at Merrero, La., within the switching district of New Orleans, La. It alleges that defendants' port-to-port rate between New Orleans and Atlantic ports of 37 cents per 100 pounds, minimum 36,000 pounds, on wallboard, northbound, and 27 cents per 100 pounds, minimum 24,000 pounds, on scrap paper, southbound, effective July 10, 1937, are unreasonable, and unduly prejudicial in violation of the Shipping Act, 1916, as amended; that such rates were published pursuant to an agreement not filed with the

Commission in violation of section 15 of the act; and that defendant Pan-Atlantic's split-delivery charge of 2.5 cents per 100 pounds, effective September 1, 1937, unreasonably increases the base rates under attack. Certain-teed Products Corporation and New Orleans Joint Traffic Bureau intervened in support of complainant. Seatrain Lines, Inc., and Southern Pacific Company (Southern Pacific Steamship Line-Morgan Line) intervened in support of defendants. No evidence was offered in support of the alleged violation of section 15. Rates will be stated per carload in amounts per 100 pounds.

Complainant's wallboard is manufactured from processed bagasse, or spent sugar cane, and scrap paper. The delivered price of wallboard at destination is \$33 per 1,000 square feet. It stows from 98 to 112 cubic feet per ton, loss and damage claims are negligible, and the movement is regular, having increased from 7,195 tons in 1932 to 16,843 in the first eight months of 1937.

In *Commodity Rates Between Atlantic and Gulf Ports*, 1 U. S. M. C. 642, we approved certain rate increases on commodities transported between United States ports on the Gulf of Mexico and United States ports on the Atlantic Coast north of and including Norfolk, Virginia. The approved increases became effective July 10, 1937. The increases on wallboard northbound, and on scrap paper southbound were 31 and 8 percent, respectively. The average increase on all affected commodities was approximately 22.5 percent. Since the increases in that case involved both port-to-port rates and joint rail-and-water rates filed with the Interstate Commerce Commission, both Commissions heard the cases jointly on the same record. Approval by the Maritime Commission was based on carriers' evidence of rising costs of operation and the need for additional revenue, and was without prejudice to the rights of shippers to adduce further evidence of unreasonableness. This case was brought pursuant to that ruling.

As evidence of the unreasonableness of the 37-cent rate on wallboard, complainant showed that the ratio of the freight rate to the value of the commodity has increased from 4.8 percent, in 1927, to 8.42 percent at the present time, an increase of more than 60 percent. It also urges a comparison with defendants' 23-cent rate on pulpboard. However, as stated in *Fir-Tex Insulating Board Co. v. Luckenbach S. S. Co.*, 1 U. S. S. B. 258, insulating board, which is competitive with complainant's product, and pulpboard are not comparable.

The record shows that while defendants charged complainants 37 cents for shipments from New Orleans to Atlantic ports their rate was only 32 cents, minimum 50,000 pounds, on traffic originating at Laurel, Miss., 146 miles north of New Orleans, for shipments from New Orleans to the same destinations. Similarly, defendants charged a rate of 27

cents, minimum 50,000 pounds, on shipments originating at Laurel and destined to inland points beyond Atlantic ports, while the corresponding rate from New Orleans to the same destinations was 30 cents, minimum 36,000 pounds. The rail rate from Laurel to New Orleans is 13 cents.

After the hearing in this case, the rates on wallboard and scrap paper were further increased, effective April 4, 1938. The scrap paper rate was increased to 30 cents, minimum 24,000 pounds. The rate on wallboard for direct port-to-port movement was increased to 41 cents, minimum 36,000 pounds, and the rate to inland points beyond Atlantic ports was increased to 33 cents. Likewise, the port-to-port rate on wallboard originating at Laurel was increased to 35 cents, and the rate to inland points beyond Atlantic ports to 30 cents.

Defendants seek to draw favorable comparisons between the wallboard rate and their northbound rates on other commodities; such as a rate of 23 cents on pulpboard, which has a stowage factor of 98; 33 cents on cotton, stowage factor 132; 40 cents on green salted hides, stowage factor 48; and 41 cents on canned goods, stowage factor 54. Defendants absorb 3 cents of the charge for trucking wallboard from plant to dock, and a $\frac{3}{4}$ of a cent tollage charge. They point out also that wallboard requires twice as much time to unload as general cargo.

Scrap paper sold for prices ranging from \$6.50 to \$14.50 a ton during the period from January to September 1937. It is shipped in bales weighing about 1,000 pounds each and moves to complainant's plant in defendants' vessels in substantial volume, ranging from 6,398 tons in 1932 to 29,708 tons in the first 8 months of 1937.

Complainant's evidence intended to establish the unreasonableness of the 27-cent rate on scrap paper is limited substantially to a comparison with the northbound rate of 23 cents on pulpboard, wrapping paper, and paper bags. The stowage factors of the commodities thus compared are 98, 75, and 103, respectively, while for scrap paper it is 112. In answer, defendants compare the scrap paper rate with a number of other southbound rates ranging from 32 $\frac{1}{2}$ cents on iron and steel to 41 cents on canned goods and roofing material.

The remainder of defendants' evidence as to the reasonableness of the scrap paper rate, except as to the need for more revenue, relates to absorptions, the service rendered the cargo, and its desirability. Defendants absorb a tollage charge at New Orleans of $\frac{3}{4}$ of a cent, a drayage charge of 4 $\frac{1}{2}$ cents, and stacking and other charges amounting to 1 $\frac{1}{10}$ cents at New York. There are also other expenses, such as approximately 7 cents a ton for reopering, cleaning ship after removal of paper, which averages 5 to 7 cents a ton on the total amount

carried, and the cost of weighing the bales. Defendants assist in unloading trucks at the wharf, provide board dunnage, and to avoid breakage and facilitate unloading, leave rope slings around the last bales loaded. Broken bales average from 1 to 1.5 percent of total shipments.

As in *Commodity Rates Between Atlantic and Gulf Ports, supra*, defendants rely principally on their need for additional revenue to justify the rates under consideration. From the time Pan-Atlantic started operation in September 1933, to December 31, 1934, it incurred a net loss of \$92,228.82. In 1935 it earned a profit of \$11,125.01; in 1936, a profit of \$66,016.04; and in the first 6 months of 1937 showed a net loss of \$3,677.87. It is urged that since 1933, crew's wages have increased approximately 20 percent, subsistence 16 percent, wages for wharf clerks about 48 percent, fuel oil 10 percent, repairs 10 percent, and charter hire 67 percent. Material costs have increased 35 percent since 1934, rope alone having increased 55 percent since 1933. The new social security tax is pointed out as another item which increases costs. Pan-Atlantic's vessels were built in 1918-20 and soon will be in need of major repairs. Mooremack showed a profit of \$14,584.01 in 1933; a net loss of \$18,576.99 in 1934; a net loss of \$29,494.14 in 1935; a profit of \$2,350.05 in 1936; and a net loss of \$50,530.19 for the first 6 months of 1937. Its vessels were built in 1919 and 1920.

While the increases authorized in *Commodity Rates Between Atlantic and Gulf Ports, supra*, were granted in recognition of the carriers' revenue needs, such increased costs of operation must be fairly distributed over all cargo transported. The record shows that the disproportionate increase in wallboard rates is not justified. A rate of 35 cents, which defendants now charge for the same transportation of wallboard originating at Laurel, would more nearly harmonize with the increases of rates made on other commodities. The rate on scrap paper, on the other hand, is not shown to be unreasonable.

Complainant seeks to establish that the rates under consideration are unduly prejudicial by comparing the rate on wallboard with the 23-cent rate on pulpboard; and by pointing out that scrap paper bears the same rate as baled rags valued at \$28 per ton. There is no proof that competition exists between the compared commodities, or that the allegedly preferential rates have had any injurious effect upon complainant's business.

The assailed split-delivery charge applies only upon request of shipper or consignee for split-delivery service. Complainant does not require the service and offered no evidence as to the lawfulness of the charge.

Upon this record we find that the port-to-port rate on wallboard from New Orleans to Atlantic ports is, and for the future will be,

unreasonable to the extent that it exceeds, or may exceed, 35 cents, but that it is not otherwise unlawful. We further find that the rate on scrap paper has not been shown to be unlawful.

As stated, the 37-cent rate on wallboard was increased after the hearing to 41 cents, or approximately 10 percent. Counsel for defendants stated at the argument they were unwilling that the issue as to the lawfulness of the increased rate be considered upon this record. Therefore, our findings are based strictly upon the record as made, and no opinion is expressed as to the propriety of the 10 percent increase.

An order will be issued herein prescribing a rate of 35 cents on wallboard for the future, without prejudice to defendants' right to file a petition to vacate the maintenance feature of the order should they desire to adjust the 35-cent rate in line with the increases made effective April 4, 1938.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,
held at its office in Washington, D. C., on the 17th day of November,
A. D. 1938

No. 448

THE CELOTEX CORPORATION

v.

MOOREMACK GULF LINES, INC., AND PAN-ATLANTIC STEAMSHIP
CORPORATION

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 said report is hereby referred to and made a part hereof;

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before December 23, 1938, and thereafter to abstain from, publishing, demanding, or collecting for the transportation of wallboard from and to the points designated in the next succeeding paragraph hereof, rates which exceed those prescribed in said paragraph;

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before December 23, 1938, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in the Intercoastal Shipping Act, 1933, as amended, and thereafter to maintain and apply to the port-to-port transportation of wallboard from New Orleans, La., to Atlantic ports, rates which shall not exceed 35 cents per 100 pounds.

By the Commission.

[SEAL]

(Sgd.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 474

RELIANCE MOTOR CAR COMPANY ET AL.

v.

GREAT LAKES TRANSIT CORPORATION

Submitted September 19, 1938. Decided November 22, 1938

Section 22 of the Shipping Act, 1916, as amended, requires that complaints which seek reparation be filed and sworn to within 2 years after the cause of action accrues. Such complaints not meeting this requirement barred. Complaint dismissed for lack of jurisdiction.

Edward F. Howrey for complainants.

Frank W. Sullivan for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by the complainants to the report proposed by the examiner. The findings recommended by the examiner are adopted herein.

The complaint, as amended, filed February 16, 1938, alleges that the rate assessed and collected by defendant on shipments of automobiles from Detroit, Mich., to Duluth, Minn., is unjust and unreasonable in violation of section 18 of the Shipping Act, 1916, as amended. An award of reparation with interest is requested.

The shipments were delivered on various dates during 1923. Informal unverified complaints¹ covering them were filed in 1925 and were handled under the Rules of Practice in effect at that time. Neither the informal complaints nor the present formal complaint indicates the dates on which the charges in question were paid. Some of the informals were subsequently verified within 6 months after

¹ 458 to 470, inclusive; 473 to 476, inclusive; 478 to 484, inclusive; 487 to 494, inclusive; 503 to 507, inclusive; 515 to 518, inclusive.

informal adjustment was denied, but more than 2 years after cause of action accrued.

Defendant's answer to the complaint and its motion to dismiss, filed simultaneously, raise a question of jurisdiction which parties have submitted for determination on brief without an oral hearing.

The question presented is whether under section 22 of the Shipping Act, 1916, as amended, it is essential that complaints be sworn to within 2 years from the time cause of action accrues to vest jurisdiction in this Commission. Section 22 provides in part:

That any person may file with the Board a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act, and asking reparation for the injury, if any, caused thereby. * * * The Board, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

On this question the complainants cite *U. S. v. Memphis Cotton Oil Co.*, 288 U. S. 62, and *Griffin v. United States*, 13 Ct. Cl. 257. The Memphis case involved a claim to recover overpayment of taxes. The statute named the period within which such claims must be filed, while the treasury regulations required that the facts in support thereof be filed under oath. The claim, although presented within the statutory period, was not verified in accordance with the treasury regulations. The allowance of the claim by the Court of Claims was upheld by the Supreme Court. The right of a governmental body to waive its rules and regulations differs materially from its right to waive provisions of an act conferring upon it jurisdiction of the subject matter. This distinction is clearly outlined by the court when it says:

The line of division must be kept a sharp one between the function of a statute requiring the presentation of a claim within a given period of time, and the function of a regulation making provision as to form. The function of the statute, like that of limitations generally, is to give protection against stale demands. The function of the regulation is to facilitate research.

This holding was reaffirmed in *U. S. v. Garbutt Oil Co.*, 302 U. S. 528.

The Griffin case was an action in the Court of Claims filed within the statutory period, but not verified until after the expiration thereof. Objection was made that the petition was not verified as required by section 12 of the Act of March 3, 1863 (12 Stat. L. 765), which provided "That any petition filed under this act shall be verified by the affidavit of the claimant, * * *." This act was amendatory to the Act of February 24, 1855 (10 Stat. L. 612), which established the Court of Claims and conferred upon it general jurisdiction. It was held that verification after the expiration of 6 years did not defeat the jurisdiction of the court. The decision is based upon the fact

that the act of 1855 conferred general jurisdiction on the court and that of 1863 was not essential thereto. In this respect the act of 1863 differs from the Shipping Act, 1916, without which the Commission would have no jurisdiction in the premises. Further, the court held that the amendatory act did not specify the time within which verification should be made, stating that if it had required the verification of the petition before or at the time of its being filed there would be a better foundation for the objection. It is to be noted that the defendant filed a general traverse in this case and so waived the verification.

The Shipping Act, 1916, is one without which the Board, now the Commission, would have no jurisdiction in the premises. When such is the case requirements of the act must be strictly complied with. *E. B. of C. I. v. C. N. W. & U. S.*, 19 Ct. Cl. 35. The same holding is found in *Botany Mills v. U. S.*, 278 U. S. 282, citing *Raleigh & Gaston Railroad Co. v. Reid*, 13 Wall. 269, where it was held that "when a statute limits a thing to be done in a particular mode, it includes a negative of any other mode."

It is necessary for an administrative body to comply strictly with an act of Congress delegating to it jurisdiction over any given field. As a general rule, when jurisdiction is conferred by statute, every act necessary to such jurisdiction must affirmatively appear. If the statute is not complied with, jurisdiction does not exist. If one of the mandates of the statute is that complaints brought under it be sworn to when filed, one that is not so sworn to is not such a complaint as the statute requires, and is not, therefore, sufficient to give to the Commission jurisdiction of the subject matter. Section 22 clearly requires that a complaint be sworn to when filed, and the Commission has no power to waive this requirement. See *Muir-Smith Co., et al. v. Great Lakes Transit Corp.*, 1 U. S. S. B. 138.

The Rules of Practice of the United States Shipping Board in effect at the time the informal complaints were filed provided, in part, as follows:

Claims for reparation filed with the Board more than 2 years after the freight charges have been paid on the shipment involved will be rejected as barred by the statute of limitations. Where a claim for reparation has been submitted to the Board informally, and the complainant has been notified that such claim can be determined only on the formal docket, formal complaint shall be filed within 6 months from the date of such notification, where the expiration of such period is more than 2 years subsequent to the date on which the cause of action accrued. Otherwise, the parties shall be deemed to have abandoned their claims and formal complaints thereafter will not be entertained.

Complainants urge that the second and third sentences of the above rule constituted authority by administrative sanction of a

6-months' period in addition to the 2-year period specified by the statute, and that, due to these sentences, those of the informal complaints which were verified and filed as formal complaints within such 6-months' additional period are to be considered as complying with the statute. Even though complainants' interpretation of the sentences referred to be accepted as correct, it is clear that any such extension was unauthorized and void. The Shipping Board manifestly had no authority to enlarge its statutory jurisdiction by adoption of a rule of the meaning contended for by complainants.

We find that section 22 of the Shipping Act, 1916, as amended, requires that complaints be sworn to when filed, which filing must occur within 2 years from the time the cause of action accrues in order to enter an award of reparation. Reparation on claims not meeting these requirements is barred; and, with respect to such claims, the complaint is dismissed for lack of jurisdiction. An appropriate order will be entered.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 22nd day of November A. D. 1938.

No. 474

RELIANCE MOTOR CAR COMPANY ET AL.

v.

GREAT LAKES TRANSIT CORPORATION

This case being at issue upon complaint and answer on file, and having been submitted for determination on brief without oral hearing, 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 be dismissed with respect to all claims for reparation which have not been filed under oath within 2 years from the time the cause of action thereon accrued.

By the Commission.

[SEAL]

(Sgd.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 499

EASTBOUND INTERCOASTAL-GULF SUGAR RATE

Submitted November 1, 1938. Decided November 23, 1938

Respondents having filed schedules canceling those suspended herein, which schedules were accepted for filing, order of suspension vacated, and proceeding discontinued.

Ernest Holzborn and Joseph J. Geary for respondents.

W. C. Burger, E. H. Burgess, Charles Clark, H. H. Larimore, R. S. Outlaw, M. G. Roberts, E. A. Smith, H. E. Spencer, C. R. Webber, Lawrence Chaffee, Harry Wilson, R. I. Miles, J. C. Kuebert, W. L. Taylor, William Oliphant, J. F. Girault, Edward Clemens, Harry C. Ames, E. B. de Villiers, R. D. Reeves, C. F. Dalberg, P. M. Ripley, L. F. Daspit, Rene A. Stiegler, W. L. Thornton, Jr., M. G. de Quevedo, Nuel D. Belnap, and William A. Angus for protestants.

Louis A. Schwartz, C. A. Mitchell, and E. H. Thornton for New Orleans Joint Traffic Bureau.

REPORT OF THE COMMISSION

BY THE COMMISSION :

By schedules filed to become effective September 20, 1938, respondents proposed to establish a rate on sugar in packages from United States Pacific coast ports to United States ports on the Gulf of Mexico of 22.5 cents per 100 pounds, minimum 500 tons.

Upon protests filed on behalf of numerous railroads, intercoastal steamship companies, Inland Waterways Corporation, Mississippi Valley Barge Line Company, and The Port of New York Authority, the operation of the proposed schedules was suspended until January 20, 1939.

The case was heard at New Orleans, La., on September 30, 1938. Neither respondents nor protestants offered any evidence. The New

Orleans Joint Traffic Bureau adduced evidence in support of its position that joint through rates and through routes should be established on sugar moving from the Pacific coast to interior points such as Chicago, Ill., and St. Louis, Mo., over intercoastal lines to New Orleans, thence barge, rail, and/or barge-rail lines based on differentials, prescribed by the Interstate Commerce Commission, under the prevailing transcontinental all-rail rates from the Pacific coast to the same destinations. In view of our conclusions herein, no discussion of this evidence is warranted. Respondents moved to adjourn the hearing for 30 days, but the motion was denied. On November 1, 1938, respondents filed schedules effective December 2, 1938, canceling the suspended rate, which schedules were accepted for filing. By the acceptance of such filing the question of lawfulness of the suspended schedules becomes moot. An order will be entered vacating the order of suspension and discontinuing this proceeding.

1 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 23rd day of November, A. D. 1938.

No. 499

EASTBOUND INTERCOASTAL-GULF SUGAR RATE

It appearing, That by order dated September 16, 1938, this 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 January 20, 1939;

It further appearing, That investigation of the matters and things involved has been made and that said Commission on the date hereof has made and filed a report thereon which report is hereby referred to and made a part hereof, and has found that the issue as to the lawfulness of the schedules has become moot by the filing of schedules canceling the suspended schedules, which schedules were accepted for filing;

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 December 2, 1938, and that this proceeding be discontinued.

By the Commission.

[SEAL]

(Sgd.) RUTH GREENE,
Assistant Secretary.

TABLE OF COMMODITIES

- ALPACA HAIR.** New York, N. Y., to and from Boston, Mass., 86.
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INDEX DIGEST

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ABSORPTIONS. *See also* FREE TIME; LOADING AND UNLOADING; TARIFFS; ALLOWANCES.

Absorptions of any charges whatsoever or the performance of any service of any nature, free of charge or otherwise, is not legal in connection with intercoastal transportation, unless and until proper provisions have been made in the carrier's tariff. *Intercoastal Investigation, 1935, 400 (449).*

Absorption by respondents is made of storage, wharfage, dockage, handling, lighterage, trucking, and toll charges; also they permit storage of property, load and unload lighters, rail cars, trucks, and handle property between such equipment and their vessels, without proper tariff authority. They also fail to collect charges for segregation, heavy lifts, or pool cars, in accordance with their tariff. Each of them should be required to cease and desist from such unlawful practices. *Id. (462).*

Absorptions intended to attract traffic, such as of charges for loading and unloading rail cars or lighters or for other services which are not the duty of the intercoastal carriers to perform, are not lawful. *Id. (468).*

Absorption of charges for loading or unloading rail cars or lighters or for any service which it is not the duty of intercoastal carriers to perform clearly results in unwarranted dissipation of revenue which is not sanctioned by law. *Id. (435-436).*

Refusal to absorb wharfage charges, state toll, and war tax, not shown to have been unlawful. *Boston Wool Trade Association v. General Steamship Corporation, 49 (52).*

Rules which do not disclose the cost of the service or the specific amount to be absorbed clearly open the gate to rebates, under preferences and prejudices prohibited by law. *Intercoastal Rates of Nelson Steamship Company, 326 (340).*

Rules which authorize services and facilities at no charge fail to recognize the definite relationship between service and compensation which characterizes the business of common carriers, and rules which do not disclose the specific amount absorbed, even if the charge is one that properly may be absorbed, defeat the legally established rate and unwittingly open the door to rebates. *Intercoastal Investigation, 1935, 400 (414).*

Terminal charges of another carrier absorbed for the purpose of establishing through rates for a through route is not provided for by law. *Id. (440).*

Terminal charges at Oakland, Calif., are absorbed whether or not respondent calls direct at Oakland; and if it elects to make delivery by barge at that port, it absorbs the cost thereof without specifying the amount. Also, no limit is placed upon the amount of car unloading at Philadelphia or top wharfage or car unloading at Baltimore, or on-carrying charges on shipments destined to Stockton or Sacramento absorbed by respondent. Respondent's rules in such connection are not in consonance with law. *Id. (419).*

ABSORPTIONS—Continued.

Unloading from rail cars, drayage, lighterage, and floatage are not services which fall upon respondents, for they have no through-route arrangements or joint through rates with rail carriers. This applies with equal force as to loading rail cars, use of such cars for which demurrage charges are imposed by rail carriers, and as to transfer of rail shipments from and to respondents' vessels. *Id.* (418).

ACCOUNTS.

The Board is not empowered to prescribe accounting rules and systems to be observed by the carriers subject to its jurisdiction. *Increased Rates, 1920, 13 (15).*

ADEQUACY OF SERVICE.

Service that will fully meet the needs of the shipping public required *Id.* (18).

Benefits to the shipping public arising from a more frequent and regular service must be given consideration. *Atlantic Refining Company v. Ellerman & Bucknall Steamship Company, 242 (254).*

Proposed amendments to agreement No. 2742 in essence required any party seeking admission to the conference to make a showing that the requirements of the trade justified the additional service of the type offered by the applicant. These proposed amendments were disapproved by the Department. *Gulf Intercoastal Conference Agreement, 322 (324).*

Need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920, which states that it is necessary for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels. Section 7 of that act directs the Department to investigate and determine what steamship services shall be established and the type, size, speed, and other requirements of vessels to be employed in such service, and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent services. *Section 19 Investigation, 1935, 470 (497).*

Plea of redundancy of tonnage is not tenable under the provisions of law applicable in this case. *American Caribbean Line, Inc. v. Compagnie Generale Transatlantique, 549 (551).*

Reasonable service to the public is expected to be furnished by carriers maintaining through routes and joint rates. *Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (605).*

ADMISSION OF UNLAWFULNESS.

Defendants admitted complainant's allegation of undue and unreasonable preference, prejudice, and disadvantage. Such an allegation, however, is not proven by the mere admission of the carrier. *H. Kramer & Co. v. Inland Waterways Corporation, 630 (633).*

ADVANTAGES. See PREJUDICE; PROFIT TO SHIPPERS.**ADVERTISEMENTS.**

Advertisement of the minimum first-class fare by the carrier should avoid any statement that would be likely to lead prospective passengers to believe that the accommodations to be obtained are anything but what they actually are. *Passenger Classifications and Fares American Line Steamship Corporation, 294 (303).*

AGENTS.

Ticket agent's relation to its principal is of a fiduciary nature. As large sums of money are handled by these agents, the lines should be permitted all possible latitude in the appointment and supervision in order to ensure proper protection to themselves and to the public. No duty rests upon the lines to appoint all ticket sellers as their agents, and it does not appear that the public interest has suffered because of the lines' refusal to pay commissions to all licensees for tickets and orders purchased by them. The Shipping Act, 1916, was not intended as a substitute for the managerial judgment of carriers. *Joseph Singer v. Trans-Atlantic Passenger Conference*, 520 (523).

AGREEMENTS UNDER SECTION 14A. See also AGREEMENTS UNDER SECTION 15.

Complainant admitted to conference; proceeding discontinued. *Dollar Steamship Lines v. P. & O. Steam Navigation Co.*, 262 (263).

Redundancy of tonnage pleaded is not tenable under the provisions of law applicable to this case. *American Caribbean Line v. Compagnie Generale Transatlantique*, 549 (551).

Complainant's application for admission to the association is based on the participation of a number of undisclosed transatlantic lines in a transshipment route substantially longer than the direct route observed by conference lines, with no restriction as to sphere of operations at European terminal ports. The members of the association operate direct transatlantic services with some limitation of sphere for each line at European ports. Such application, therefore, is not for admission on equal terms with the members of the association in accordance with the letter and spirit of the agreement as shown by the record in the proceeding. *Id.* (553).

Exclusion from admission upon equal terms with all other parties to the conference not shown. *Id.* (553).

Petition to withdraw complaint of United States Lines Company and to discontinue proceeding concerning agreement between Cunard White Star Limited, Bibby Line Limited, British & Burmese Steam Navigation Co. Ltd., and Burma Steamship Co. Ltd., which was alleged to be in violation of sections 14a and 15 of the Shipping Act, 1916, granted. *United States Lines Company v. Cunard White Star Ltd.*, 598 (599).

AGREEMENTS UNDER SECTION 15. See also AGREEMENTS UNDER SECTION 14A; FOREIGN FLAG CARRIERS; NONCOMPENSATORY RATES.**In General:**

When a rate or rule is once adopted and one party to conference agreement consistently and selfishly refuses to cast its consenting vote which would remove or change that rule or rate, the conference to all intents and purposes ceases to be voluntary. *Port Utilities Commission of Charleston v. Carolina Co.*, 61 (72).

A too literal interpretation of the word "every" in section 15 to include routine operations relating to current rate changes and other day-to-day transactions between carriers under conference agreements would result in delays and inconvenience to both carriers and shippers. *Section 15 Inquiry*, 121 (125).

The usual though not invariable practice followed by conferences of sending the Board copies of minutes of their meetings and of circulars and tariffs as issued to members, which contain references only to routine arrangements for the carriers' record and guidance and

AGREEMENTS UNDER SECTION 15—Continued.

In General—Continued.

not imposed by section 15, is not to be regarded as a filing under section 15, but as information on conference activities. *Id.* (125).
Agreements arrived at by conference carriers providing for fixing or regulating transportation rates or fares and the other matters specified in section 15 and agreements modifying or canceling such agreements are to be distinguished from the routine of conference activities. *Id.* (124-125).

In writing section 15 into the statute, Congress gave sanction and encouragement to conferences, and the benefits that flow to shippers as a class from conferences are often as substantial as the benefits accruing to the carrier members themselves. It is the Board's function to afford relief from actual, not theoretical, wrongs, and it should not disturb conference relationships without compelling reasons and a reasonable certainty that any cancellation or modification of an agreement it might order under authority of section 15 would be of practical benefit. Rates in Canadian Currency, 264 (281).

Forwarders are subject to the Shipping Act, 1916, and consequently agreements between carriers and forwarders fall within the purview of section 15 thereof. The agreements under consideration fall to set forth precisely what the contemplated forwarding services are. Some of the services referred to in the record as sometimes falling within the accepted meaning of forwarding are of a character which properly cannot be performed by common carriers. *Gulf Brokerage and Forwarding Agreements*, 533 (534).

Both complainant and one of the defendants are part of the American merchant marine, and section 1, Merchant Marine Act, 1920, contains an admonition that in the administration of the shipping laws there be kept always in view the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of an adequate privately owned merchant marine. In determining whether a particular agreement should be disapproved under authority of section 15, the Department must weigh all facts involved in the light of this policy. Had the power been given the Department to compel complainant, defendants, and all other carriers in the trade to raise their rates, the situation is such that that power would now be exercised. Were the agreement under consideration actually responsible for the low rates in the trade, the department's course of action under existing power would also be clear. There is nothing in the record, however, to warrant the conclusion that the agreement has brought about the unremunerative rate level. On the contrary, the provision in the agreement requiring unanimous consent for rate changes gives ground for concluding that, in the absence of the agreement, the competitive situation would have brought about a rate war at an earlier date than was the case. *Seas Shipping Co. v. American South African Line*, 568 (583).

Competition:

The Commission does not agree with the view that section 15 of the Shipping Act, 1916, was not intended to embrace other than "matters that were really competitive." *Commonwealth of Mass. v. Colombian S. S. Co.*, 711 (716).

AGREEMENTS UNDER SECTION 15—Continued.

Competition—Continued.

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 changed conditions on their undertakings. *Dollar-Matson Agreements*, 750 (754).

Section 605 (c) of the Merchant Marine Act, 1936, as amended, by imposing restraints against the duplication of services by subsidized lines, takes away from the parties their opportunity to compete with one another in their respective foreign services, thus destroying the underlying consideration for the agreement. *Id.* (754).

That section 15 confers authority to regulate competition between carriers in accordance with the needs of the service was stated by the U. S. Supreme Court in the case of *Swayne & Hoyt, Ltd. et al. v. United States*, 300 U. S. 297, 305: “* * * We think there was evidence from which the Secretary could reasonably conclude that there was little need for a contract rate system to assure stability of service. * * * On the other hand, there was substantial evidence from which the Secretary could infer that the contract rate system would tend to give to the Conference carriers a monopoly by excluding competition from new lines.” *Id.* (755).

In the regulation of conference agreements under section 15, the policy of both the United States Shipping Board and the Department of Commerce was to discourage agreements which established a monopoly in favor of a competitor. *Id.* (755).

The agreement under consideration produces an effect in the Hawaiian trade which is closely analogous to that which the Department of Commerce declared was unlawful when it disapproved contract rates in the intercoastal trades: *Gulf Intercoastal Contract Rates*, 1 U. S. S. B. B. 524. In the latter case, the respondents endeavored to shut out certain competitors through the medium of contract rates. In this case, *Matson* seeks to discourage its only competitor by exacting 50 percent of that competitor's gross revenue. The distinction, if any, is one of degree only. *Id.* (756).

Conference Membership:

The membership of the North Atlantic conferences is predominantly foreign. This foreign membership, with votes outnumbering by far those of the American members, dominates the tripartite conference and the rates applicable to American commodities moving in American bottoms from American ports. The result is effective control by foreign lines of an extensive portion of the commerce and much of the shipping of the United States. Manifestly, in view of the responsibility imposed for the upbuilding of an American merchant marine, this situation calls for unequivocal action. *Port Utilities Com. of Charleston v. Carolina Co.*, 61 (73).

The proposed amendments to agreement No. 2742 in essence required any party seeking admission to the conference to make a showing that the requirements of the trade justified the additional service of the type offered by the applicant. The proposed amendments were disapproved by the Department on May 22, 1934. *Gulf Intercoastal Conference Agreement*, 322 (324).

AGREEMENTS UNDER SECTION 15—Continued.

Conference Membership—Continued.

Atlantic and Gulf/West Coast of South America Conference agreement not shown to be unlawful, and an order by the Department requiring respondents to admit complainant to membership in the conference with a rate differential found not justified. *Wessel, Duval & Co. v. Colombian S. S. Co.*, 390 (394).

The circumstances recited warrant treating Arnold Bernstein Line, Red Star Linie G. m. b. H., and Arnold Bernstein as one for the purposes of the case. Thus, to lend approval to the application of Red Star Linie G. m. b. H. for membership in the conference as long as Arnold Bernstein Line, or Arnold Bernstein, is a party to agreement No. 1456 would be sanctioning two agreements under section 15 in conflict with each other, contrary to public policy. Application of Red Star Linie for Conference Membership, 504 (508).

The application of Red Star Linie G. m. b. H. for membership in the conference was denied upon opposition by Black Diamond Lines and Compagnie Maritime Belge (Lloyd Royal) S. A., which urged the provisions of agreement No. 1456. For reasons set forth in the report, this position was justified. Disapproval of agreement 1456, however, removes this barrier. It is not apparent from the record whether Red Star Linie G. m. b. H. is willing to join the conference as now existing under the agreement approved on August 24, 1935. If so, there will exist after the order in the proceeding and upon the record before the Department no lawful reason for refusing its admission to membership. *Id.* (508-509).

Defendants in denying formally complainant's application for participation in the conference did not furnish complainant with any reason for such denial. *Seas Shipping Co. v. American South African Line*, 568 (581).

Defendants were justified in denying complainant's application for admission to the conference; unremunerative and noncompensatory rates are detrimental to the commerce of the United States; the existence of such rates in the trade involved is not the result of defendants' agreement No. 3578; and agreements Nos. 3578, 3578-A, and 3578-B, fixing rates, rotating sailings, and pooling, respectively, are not unjustly discriminatory or unfair as between carriers and do not operate to the detriment of the commerce of the United States. *Id.* (584).

The record discloses that, although the Fabre Line has not operated a vessel in the trade since June 1934, it has retained its membership in the conference and, with the other defendants, voted to decline complainant's application. Its right to vote, which is questionable, is not in issue and is not, therefore, determined. The point here is that it is considered to be a regular carrier in the trade and enjoys full and equal membership in the conference, which complainant is denied. Such discrimination is manifestly unjust. *Phelps Bros. & Co. v. Cosulich-Societa Triestina di Navigazione*, 634 (640-641).

Complainant found to be entitled to membership in the Adriatic, Black Sea, and Levant Conference on equal terms with each of the defendants, and the conference agreement and contracts found to result in unjust discrimination and to be unfair as between com-

AGREEMENTS UNDER SECTION 15—Continued.

Conference Membership—Continued.

plainant and defendants and to subject complainant to undue and unreasonable prejudice and disadvantage. *Id.* (641).

Since vessels of O. S. K. stopped calling at Puerto Colombia the agreement of August 4, 1933, as supplemented, has been inoperative. No objection is made to its cancellation. *Commonwealth of Mass. v. Colombian SS. Co.*, 711 (716).

Rates Routes, Sailings, Pooling:

As the parties to the agreement are not in any way connected with, and do not exercise any control over, the terminals at which lower charges are assessed, no discrimination is attributable to them so long as they uniformly apply at their own terminals the charges covered by their agreement. *Terminal Charges at Norfolk, Va.*, 357 (358).

As is required by section 15 of the Shipping Act, 1916, respondents have filed copy of agreement entered into by them, which has been approved, for the establishment of through routes to facilitate inter-coastal commerce from and to the points involved and for the establishment of joint rates to apply thereon. *Intercoastal Rates To and From Berkeley, Etc.*, 365 (367-368).

Respondents' rule, in observance of which their refusal to rebill and apply lower through rates on reshipping cargo is made, not shown to be violative of any provision of the Shipping Act, 1916, as amended, or to be unfair, or to operate to the detriment of commerce of the United States within the meaning of section 15 of that act. *Pablo Calvet & Co. v. Baltimore Insular Line, Inc.* 369 (371).

In the conference agreement as approved March 9, 1934, there was no provision for differential rates, but members were advised by the Department that the approval of the agreement without a provision for a rate differential in favor of slow cargo vessels maintaining direct service to ports covered by the agreement was without prejudice to any action that the Department might take in the event that a carrier operating such a service should seek admission to the conference. *Wessel, Duval & Co. v. Colombia SS. Co.*, 390 (392).

Under the prior conference agreement, participated in by the complainant and most of the respondents in the proceeding, a rate differential of ten (10) percent was allowed in favor of vessels operated by complainant and certain other lines in the conference. The record shows that this differential was agreed to by the conference to avoid a rate war and to preserve stability in the trade. It is also shown that the Brazil River Plate and Havana Steamship conferences allow a differential as between cargo vessels and passenger vessels. The facts and circumstances under which these particular differentials came into existence are not shown, but, in any event, the establishment of a system of differential rates by voluntary action of these groups of steamship lines does not create a precedent insofar as the initiation of such a system by government decree is concerned. Furthermore, the establishment by the conference involved of different rates for transshipment lines does not necessarily require the establishment of the same or any differential as between vessels affording direct service. *Id.* (392).

AGREEMENTS UNDER SECTION 15—Continued.**Rates Routes, Sailings, Pooling—Continued.**

The rate under attack was fixed by a group of carriers acting in conference relationship under an agreement which is lawful only when, and as long as, approved by the Department under authority of section 15 of the Shipping Act. 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. *Edmund Weil v. Italian Line*, 395 (398).

The carriers have indicated their willingness to consider a reduction in the rate if the complainant or anyone else will submit data indicating a reasonable possibility of developing business. It is expected that conferences will at all times give careful consideration to such requests and supporting data. *Id.* (399).

Agreement between Ericsson Line, Inc., and Pan-Atlantic Steamship Corporation for establishment of through routes and joint rates on general cargo between Baltimore, Md., New Orleans, La., Mobile, Ala., and Panama City, Fla., transshipped at Philadelphia, Pa., or Camden, N. J., approved. *Agreement Ericsson Line and Pan-Atlantic SS. Corp.*, 513 (515).

Although all parties to the rate-fixing agreement in the trade have agreed to rotate sailings, it is by no means necessary that this be the case. Rotation-of-sailing agreements, like pools, can and do exist without being participated in by all members of the rate-fixing group to which such members are parties. *Seas Shipping Co. v. American South African Line*, 568 (580).

Agreements providing for rotation of sailings, such as agreement No. 3578-A, are valuable to both carriers and shippers. The value of such an agreement would be enhanced if participated in by all lines in a trade, but that is not to say that the mere failure to admit all lines to participation warrants disapproval of the agreement. *Id.* (580).

Pooling agreement setting forth formula whereby the parties thereto apportion their combined revenue after certain specified deductions not shown to be detrimental to the commerce of the United States or otherwise of a character which the Department is permitted to cancel or modify under authority of section 15 of the Shipping Act, 1916. *Id.* (580).

Agreement providing for rotation of sailings not shown to be detrimental to commerce or otherwise within that class of agreements which section 15 of the Shipping Act authorizes the Department to cancel. *Id.* (581).

Colombian coffee transshipped at Cristobal found to move over through routes and at joint rates participated in by defendants pursuant to agreements within the purview of section 15 of the Shipping Act, 1916, copies or memoranda of which have not been filed and approved. Copies or memoranda of the agreements in question should have been filed. Therefore, all action thereunder results in violation of section 15. To the extent that they make provision for the rates condemned, they are found to be unduly preferential and prejudicial,

AGREEMENTS UNDER SECTION 15—Continued.

Rates Routes, Sailings, Pooling—Continued.

unjustly discriminatory, unfair, and detrimental to the commerce of the United States. *Commonwealth of Mass. v. Colombian SS. Co.*, 711 (716).

Unlawful, Unfair, Detriment to United States Commerce:

Tripartite arrangement or agreement between North Atlantic, South Atlantic, and Gulf conferences and steamship lines operating from ports on the North Atlantic, South Atlantic, and Gulf coasts of the United States to foreign ports found unfair as between carriers and detrimental to the commerce of the United States. *Port Utilities Commission of Charleston v. Carolina Co.*, 61 (73).

Withdrawal of approval of Gulf Intercoastal Conference agreement found not justified. *Gulf Intercoastal Conference Agreement*, 322 (325).

The record does not justify a finding by the Department that agreement No. 3488 is violative of any provision of the Shipping Act, 1916. *Terminal Charges at Norfolk, Va.*, 357 (358).

Approval of agreement of respondents for the establishment and maintenance of assembling and distributing charge will be withdrawn. *Assembling and Distributing Charge* 380 (387).

The right of the Department to disapprove any conference agreement found detrimental to the commerce of the United States and the prohibition under section 17 of the Shipping Act of rates unjustly prejudicial to exporters of the United States as compared with foreign competitors afford protection against the maintenance by a conference of rates prejudicial to our exporters. *Section 19 Investigation, 1935*, 470 (492-493).

In the light of all the facts and circumstances of record, it is clear that agreement No. 1456 as approved by the Board does not reflect the present understanding of the parties. As stated, the agreement was modified by the parties on June 6, 1933, retroactive to January 1, 1933, without approval as required by section 15. Although it is contended section 15 has not been violated because actual money transfers have not been made in excess of the amounts which would be called for under the provisions of the unapproved modification, the fact remains that the agreement as approved is neither a true copy nor a true and complete memorandum of the agreement between the parties as it has existed since June 6, 1933. Shortly after hearing a communication was received by the department from Arnold Bernstein Line, requesting "that the attached minutes of the meeting of June 6, 1933, be filed with and approved by the Department of Commerce, United States Shipping Board Bureau." The meeting referred to is the one at which the modification was agreed to. Such a request filed by only one party to the agreement, however, is not a proper filing under the requirements of section 15. Under the circumstances, approval of agreement No. 1456 will be withdrawn. *Application of Red Star Line for Conference Membership*, 504 (508).

The West Coast of Italy and Sicilian Ports/North Atlantic Range Conference agreement not shown to be detrimental to the commerce of the United States or to be in violation of the Shipping Act, 1916. *Philadelphia Ocean Traffic Bureau v. Export SS. Corporation*, 538 (542).

AGREEMENTS UNDER SECTION 15—Continued.

Unlawful, Unfair, Detriment to United States Commerce—Continued.

Modification No. 3 of North Atlantic Continental Freight Conference agreement found to be unjustly discriminatory and unfair as between carriers and detrimental to the commerce of the United States. North Atlantic Continental Freight Conference Agreement, 562 (567).

The conference agreement may continue in effect only so long as it has the approval of the 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 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 the Shipping Act, 1916, the Commission may disapprove, cancel, or modify it. If it be disapproved, it will be unlawful for defendants to carry it out, directly or indirectly, in whole or in part. *Phelps Bros. & Co. v. Coslich-Societa Triestina di Navigazione*, 634 (636-637).

Defendants' conference agreement and contracts with shippers entered into pursuant thereto have not been shown to result in undue or unreasonable preference or advantage to shippers who patronize defendants' lines exclusively or to operate to the detriment of the commerce of the United States. *Id.* (639).

Complaint alleging agreement between members of the Intercoastal Steamship Freight Association and Gulf Intercoastal Conference to be unduly and unreasonably preferential and prejudicial and unjust and unreasonable dismissed upon motion of complainant. *Inland Waterways Corporation v. Intercoastal Steamship Freight Assoc.*, 653 (655).

Addendum naming terminal and postterminal ports, providing that through-billing arrangements shall be maintained by conference members only with such other lines as are listed as recognized cocarriers to the Atlantic, Gulf, and Pacific coasts of the United States, limiting cocarriers other than conference members to particular ports of destination, and providing that cocarriers shall guarantee that they will accept traffic at Balboa or Cristobal on through bills of lading issued at Colombia Pacific and Ecuadorian ports from member lines of the conference only and that they shall agree to accept traffic from nonconference lines as local cargo only from Canal Zone ports at recognized local tariff rates, found to be unjustly discriminatory and unfair as between carriers and ports and, if carried into effect, that it would operate to the detriment of the commerce of the United States. *Commonwealth of Mass. v. Colombian SS. Co.*, 711 (718).

On September 13, 1937, Great Lakes carriers, including a representative of W. and M., reached an understanding or agreement to increase the rate on automobiles from Detroit to Milwaukee from \$12 to \$15 per automobile. Although the increased rate went into effect on October 1, 1937, no agreement or understanding was filed with the Commission as required by section 15 of the Shipping Act, 1916. *Payments to Shippers by Wis. & Mich. SS. Co.*, 744 (749).

As stated by the Department of Commerce in *Seas Shipping Co. v. American South African Line, Inc., et al.*, 1 U. S. S. B. B. 568, at 583: "If the existence of the agreement were the cause of the low rates the Department's course of action would be reasonably clear

AGREEMENTS UNDER SECTION 15—Continued.**Unlawful, Unfair, Detriment to United States Commerce—Continued.**

Whatever their immediate effect, rates unremunerative or non-compensatory are in the long run detrimental to our commerce, for our commerce embraces not only cargo moving but the instrumentalities employed in moving such cargo. Both complainant and one of the defendants, American South African Line, are part of the American merchant marine, and section 1, Merchant Marine Act, 1920, contains an admonition that in the administration of the shipping laws there be kept always in view the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of an adequate privately owned merchant marine." Dollar-Matson Agreements, 750 (755).

When the Commission finds sufficient evidence upon which to base a judgment that continued performance of the agreement would be contrary to the provisions of the Shipping Act, it has a duty under the statute to disapprove the agreement notwithstanding a previous approval. *Id.* (756).

Agreement between members of the Intercoastal Steamship Freight Association, on one hand, and members of the Gulf Intercoastal Conference, on the other, found not to reflect the true and complete agreement of the parties as required by section 15. Agreement No. 6510, 755 (778).

Agreement between members of the Intercoastal Steamship Freight Association on one hand, and members of the Gulf Intercoastal Conference, on the other, found not to reflect the true and complete agreement of the parties as required by section 15. *Id.* (778).

ALLOWANCES. See also ABSORPTIONS.

Protestants regard certain allowances and divisions granted by some of the respondents out of their rate as an admission that such rate is not too low. For instance, Calmar, in its tariff SB-I No. 7, under the so-called berth-quantity-allowance rule, provides for reductions from the basic rate on two berthings ranging from 50 cents to \$3.52 for footage shipped, ranging from 1,100,000 board feet to 5,300,001 board feet and over. If this is a legitimate inference to be drawn against Calmar, it should not be used to the disadvantage of other respondents who have not seen fit to establish such a rule. Eastbound Intercoastal Lumber, 608 (617).

Lumber-berth-quantity-allowance rules found to contravene the provisions of section 14 of the Shipping Act, 1916, which forbids the making of any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered to be unduly and unreasonably preferential of, and advantageous to, lumber shipped under the rules and shippers thereof and unduly and unreasonably prejudicial and disadvantageous to lumber moving over the lines of respondents which is not shipped under the rules and the shippers of such lumber, in violation of section 16 of the same act; and to be violative of section 2 of the Intercoastal Shipping Act, 1933, in that they do not show definitely all the rates and charges for or in connection with the transportation of eastbound intercoastal lumber. Transportation of Lumber Through Panama Canal, 646 (650).

ANALOGY, RULE OF. See COMMODITY RATES.

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ANY-QUANTITY RATES. *See also* PREJUDICE.

It is well established that on certain classes of traffic, where the prevailing shipping quantity is small, any-quantity rates rest upon sound public policy in that they counteract a tendency toward monopoly by enabling the small shipper to compete on equal terms with powerful competitors. Under such circumstances the Shipping Act does not require maintenance by carriers of rates predicated upon a quantity condition which most shippers are not prepared to meet, and the fact that carload quantities are offered for shipment does not furnish ground for attributing unlawfulness to the any-quantity rate applied thereto. *Ames Harris Neville Co. v. American-Hawaiian*, 765, (768).

ARRIVAL NOTICES.

The mailing of arrival notices to the consignee shown in the bill of lading is clearly a duty of the carrier for which an extra charge is not proper. *Intercoastal Segregation Rules*, 725 (733).

ASSEMBLING AND DISTRIBUTING. *See* DELIVERY; AGREEMENTS UNDER SECTION 15.**BANKRUPTCY.** *See* PARTIES.**BERTHING.** *See also* TERMINAL FACILITIES.

If a carrier cannot secure berthing at its own terminal dock, it may declare another dock at the same terminal port for a particular voyage. Cargo booked for the regular terminal docks is charged the tariff rates, but cargo originating at such temporary dock is charged an additional \$1 per revenue ton. It is clear that under this rule the use of temporary docks is permitted for the convenience of the carrier, and there seems to be no persuasive reason that would authorize the carrier to maintain what is in fact two sets of rates from the same dock on the same commodity to the same destination. Such a situation results in undue and unreasonable preference and advantage to the shipper of the cargo specifically booked for the carrier's regular dock to the undue and unreasonable prejudice and disadvantage of the other shipper. *Oakland Chamber of Commerce v. American Mail Line*, 314 (316).

Carriers are permitted by the rule to call for and load freight in any quantity from one shipper or supplier at docks located in ports or places other than the terminal ports listed in clause "L". Each carrier is also permitted to make divisional rate arrangements equalizing direct loading at such ports or places by other conference members. All such shipments are stated to be "subject to additional rates in accordance with the regular recognized cost of transferring cargo from nonterminal port dock to the terminal dock of the carrier." The quoted matter is ambiguous and indefinite. How the "regular recognized cost" is to be determined is not stated. Between a given nonterminal port and a terminal dock there may be several methods of transportation with widely varying costs. Furthermore, a conference carrier may serve several terminal ports, and it is not indicated to which of the several terminal docks the "recognized cost" will be assessed. *Id.* (317).

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

BERTHING—Continued.

Vessels handling cargo by direct call at nonterminal ports from one shipper or supplier, subject to the minimum rate requirement set forth above, "are permitted to accept any other additional cargo offering from the same docks in any quantity on the same terms, conditions and rates provided in (e) (1)." This provision of the rule is not free from ambiguity. It will be noted that, while acceptance of additional cargo is permitted, the words "same terms, conditions and rates" may mean that, for example, a shipper or supplier other than the shipper or supplier of the first lot if offering 50 tons is assessed freight charges on the basis of 500 tons. What has been stated in respect of the \$1 extra on additional cargo from docks within conference terminal ports other than declared docks applies here with equal force. *Id.* (317-318).

BILLS OF LADING. *See also THROUGH ROUTES AND THROUGH RATES.*

Under the Harter Act it is the duty of carriers to issue ocean bills of lading or equivalent documents as a part of their common-carrier service. Agreements regulating charges made for forwarding probably are desirable, but, if such agreements are entered into they should state clearly the forwarding services covered and should not include charges by carriers for issuing ocean bills of lading or for performing other services which it is a carrier's duty to perform. *Gulf Brokerage and Forwarding Agreements*, 533 (534-535).

Requirements of carriers in respect to bill-of-lading descriptions must be of general application to all classes of shippers and shipments; otherwise, undue preference and prejudice will result. *Intercoastal Segregation Rules*, 725 (734).

Subject to clarification to meet objections mentioned, requirements for uniformity and more detailed descriptions in shipping instructions and bills of lading do not appear unreasonable. Such detailed designations will unquestionably operate as an aid to carriers in making proper delivery in accordance with their tariffs and, also, as protection against unjust claims. Respondents have referred to the necessity of the rule to properly check lost and damaged goods that they may avoid settlements based on the highest valued article in a shipment. But, in view of the manner in which shipments are delivered to lighters, barges, river steamers, rail cars, and trucks for movement beyond ports, difficulties in this respect will still continue. Designations of the nature required, of themselves, do not constitute either a request for special sorting on the pier or an indication of the manner in which consignee will take delivery. In this connection, provisions of the Harter Act, the Bills of Lading Act, and other statutes should be construed as imposing upon carriers minimum, not maximum, requirements. *Id.* (735-736).

BILLS OF LADING ACT.

Provisions of the Harter Act, the Bills of Lading Act, and other statutes should be construed as imposing upon carriers minimum, not maximum, requirements. *Id.* (736).

BROKERS AND BROKERAGE. *See also AGREEMENTS UNDER SECTION 15.*

Brokers are not subject to the Shipping Act, 1916, and consequently, agreements between carriers subject to that act and brokers are not of the character required to be filed under section 15 thereof. However, if carriers enter into agreements with each other relating to their employment of brokers, such agreements must be submitted for the Department's consideration. The two conference agreements concerned already contain

BROKERS AND BROKERAGE—Continued.

certain provisions relating to brokerage, and any additional agreements on this subject should be filed as modifications to such conference agreements. Gulf Brokerage and Forwarding Agreements, 533 (534).

Although it may be proper for carriers to refuse to pay brokerage to any broker who solicits for a competitor or receives brokerage from a competitor, the Department will not approve agreements under which the forwarder, whether also a broker or not, would refuse to handle as a forwarder shipments as to which routing by a competing carrier has been specified by the shipper. *Id.* (535).

The agreements between certain carriers by water in foreign commerce and other persons purporting to fix brokerage commissions and forwarding charges cannot be approved. *Id.* (535).

BULK. See REASONABLENESS.

BURDEN OF PROOF. See also EVIDENCE.

An allegation that a rate is unjust and unreasonable puts the burden of proving such unjustness and unreasonableness upon complainant. *Bonnell Elec. Mfg. Co. v. Pacific SS. Co.*, 143. (144).

Where issue is raised as to the justness and reasonableness of rates and a violation of the regulatory statute is charged, the burden of proof manifestly rests upon the complainant. *Atlas Waste Mfg. Co. v. N. Y. & P. R. SS. Co.*, 195 (197).

On binder twine, an increase of 35.48 percent is proposed. Protestant offered little substantial evidence with respect to the reasonableness of this rate. On the other hand, respondents offered no justification for the increased rate and, therefore, have not borne the burden of justifying it. The increased rate should be canceled. *Commodity Rates Between Atlantic and Gulf Ports*, 642 (645).

The 16-cent rate, voluntarily established and maintained for a period of time exceeding two years, was prima facie reasonable, and a 56-percent increase therein must be justified. *Sugar From Virgin Islands*, 695 (697).

CARGO SPACE ACCOMMODATIONS.

Defendants found to have unfairly treated and unjustly discriminated against complainant in the matter of cargo space accommodations, due regard being had for the proper loading of the vessels and the available tonnage, in violation of paragraph "Fourth" of section 14 of the Shipping Act, 1916. *Hernandez v. Bernstein*, 686 (691).

The publication and filing of a tariff imposes an obligation upon a carrier to serve the ports or places named therein, and a refusal to book cargo, if at the time space is available, for the sole reason that more profitable bookings are available elsewhere, is not sanctioned by the Shipping Act. *Sugar From Virgin Islands*, 695 (698).

CARLOAD—LESS CARLOAD. See CONTRACTS WITH SHIPPERS.

CHARGES DEFINED. See also RATE DEFINED.

Charges are the segregated items of expense which are to be demanded by the carrier for any service in connection with transportation. *Intercoastal Investigation*, 1935, 400 (431).

CHARTER. See COMPETITION; CONTRACT CARRIER.

CIRCUMSTANCES AND CONDITIONS. See PROFIT TO SHIPPERS; SERVICE; SIMILARITY OF SERVICE.

COLLECT CHARGES. See PREPAYMENT OF CHARGES.

COMMERCE.

The fact that incidentally a part of the through transportation from a foreign country to a destination in United States was between ports in the United States did not change the character of that portion from foreign to interstate. *Boston Wool Trade Assoc. v. Oceanic SS. Corporation*, 86 (87).

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, 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. *Intercoastal Investigation*, 1935, 400 (440).

Our commerce embraces not only cargo moving but the instrumentalities employed in moving such cargo. *Seas Shipping Co. v. American South African Line*, 568 (583).

Defendants are engaged in the transportation of property by water between Manila, Philippine Islands, and the United States, and in respect of such transportation are common carriers by water in interstate commerce. *Johnson Pickett Rope Co. v. Dollar SS. Lines*, 585 (585).

The reasonableness of the truck rates between San Diego and Los Angeles is a matter within the jurisdiction of the Railroad Commission of the State of California. *Gulf Intercoastal Rates To and From San Diego (No. 2)*, 600 (604).

In the absence of a through route, a movement on local bills of lading between Los Angeles and San Diego becomes intrastate. Any movement between points within the same State is not subject to the Department's jurisdiction unless it constitutes part of a through-route movement in interstate or foreign commerce. *Id.* (605).

As stated by the Department of Commerce in *Seas Shipping Co. v. American South African Line, Inc., et al.*, 1 U. S. S. B. 568, at 583: " * * * our commerce embraces not only cargo moving but the instrumentalities employed in moving such cargo. * * *" *Dollar-Matson Agreements*, 750 (755).

COMMISSIONS. *See also* AGENTS.

Refusal by defendants to pay commissions to persons other than their authorized agents on passenger tickets and orders for transportation purchased for customers for passage on defendant lines between ports in the State of New York and foreign countries does not result in unreasonable or undue preference or prejudice to such persons under sections 14 and 16 of the Shipping Act, 1916. *Joseph Singer v. Trans-Atlantic Passenger Conference*, 520 (523).

COMMODITY RATES. *See also* CONSOLIDATED CLASSIFICATION; VOLUME OF TRAFFIC.

Ordinarily, taking article out of class-rate basis and assigning commodity rates to be charged thereon denotes a substantial movement of the commodity, and, generally, the commodity rate is somewhat lower than the class rate which it displaces. *American Peanut Corporation v. M & M T.*, 78 (82).

Classification ratings are generally the highest which a particular article should bear under normal conditions, and it may be stated as a matter

COMMODITY RATES—Continued.

of accepted principle that to assign an article a commodity rate which is higher than its applicable class rate is indicative of some unusual circumstance or circumstances incident to the transportation of that article which specially justifies the increased rate. *Id.* (83).

The classification rule of analogy does not apply to commodity rates. *Firtex Ins. Board Co. v. Luckenbach SS. Co.*, 258 (259).

Commodity rates must be applied strictly and are applicable only to such articles as are clearly embraced within the commodity-rate description. *Id.* (261).

COMMON OWNERSHIP OR CONTROL.

The circumstances recited warrant treating Arnold Bernstein Line, Red Star Linie G. m. b. H., and Arnold Bernstein as one for the purposes of the case. Application of Red Star Linie for Conference Membership, 504 (508).

COMPETITION. *See also* PROFIT TO SHIPPERS; AGREEMENTS UNDER SECTION 15.*In General:*

There is manifestly no provision of the Shipping Act which can be construed to forbid a carrier to meet competition or to enlarge the scope of its patronage and its volume of business if it can do so without unfairness to those whom it serves. Board of Commissioners, Lake Charles *v.* New York & Porto Rico SS. Co., 154 (156).

The circumstance that complainant has confined its shipments to respondents' lines and that at the moment there appear to be no carriers threatening the trade's rate stability gives no assurance to respondents that they may not at any time find a reverse situation confronting them. Operators of vessels in foreign commerce of the United States may at any time and without warning be subjected to severe competition by unregulated tramp vessels of any nation or by vessels chartered by shippers with large quantities of cargo to be transported. The exigencies of ocean transportation, and particularly in a long-voyage trade such as concerned in the instant case, too frequently approach such a vital character that they cannot be neglected by the vessel operator if he is to survive, nor treated as inconsequential by the Board in its determinations in complaint proceedings. *W. T. Raleigh Co. v. Stoomvart*, 285 (291-292).

In recent years the use of the practices set forth has become increasingly prevalent, due apparently to the growing realization by foreign-flag operators of the vulnerability of our conferences, which, by the Shipping Act, 1916, are prohibited from using the deferred-rebate system employed almost universally in the export trades of other countries as a protection against such competition. Section 19 Investigation, 1935, 470, (490).

The need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920, which states that it is necessary for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels. Section 7 of that act directs the Department to investigate and determine what steamship services shall be established and the type, size, speed, and other requirements of vessels to be employed in such service, and the frequency and regularity of their sailings, with a view to furnishing adequate,

COMPETITION—Continued.

In General—Continued.

regular, certain, and permanent services. The American-flag lines who have asked the Department to establish rules and regulations under section 19 of the Merchant Marine Act were brought into existence as a result of this mandate of Congress. The ends sought by this legislation cannot be achieved and this policy will be defeated unless destructive methods of competition can be prevented. *Id.* (497).

The truck rates are described by protestant as being the result of "cutthroat" competition. The rail rates between Los Angeles and San Diego are named in the railroad tariffs as truck competitive rates. It seems clear that they cannot be considered maximum reasonable rates. *Gulf Intercoastal Rates To and From San Diego, 600 (604).*

It is true that the active market competition from other lumber-producing regions has a limiting effect upon the value of the service to protestants. Furthermore, the availability of relatively cheap rail transportation and water transportation at lower charter rates tends to lessen the worth of respondents' services. Just what weight should be given to these factors is difficult to determine. *Eastbound Intercoastal Lumber, 608 (621).*

Passenger Fares:

There should be an effort to grade all fares so as to put them as nearly as possible on a fair competitive basis, considering the age, size, speed, and itinerary of the vessel, the character of the accommodations and service offered, the peculiar characteristics of the particular trade involved, and the needs of the carrier. *Passenger Classifications and Fares, American Line SS. Corporation, 294 (304).*

If the experience of the respondent, gained from more than five years' operation of its present vessels in the intercoastal trade, prompts that line to make changes in its passenger fares and classifications applicable to these vessels, the complaint of competing lines in the same trade that they will be forced to reduce their fares to the extent necessary to maintain the existing differentials does not make out even a *prima facie* case of unreasonableness or unlawfulness under the provisions of the Shipping Act, 1916. *Id.* (304).

Even though some passengers may be diverted from other lines in the same trade, that result in and of itself would not make the suspended tariff unlawful. *Id.* (304-305).

Respondent's ships involved in the proceeding are not in any way competing in the transpacific trade, and, therefore, the lawfulness of the suspended tariff should not be tested by unsupported forecasts of possible tumult and havoc in that trade. *Id.* (305).

Carrier:

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 the Department is charged by law. The acts which the Department administers frown upon destructive carrier competition, and the greater the danger in this respect the greater

COMPETITION—Continued.

Carrier—Continued.

is the need for unswerving fidelity to the policy and primary purpose declared by law. *Intercoastal Rates of Nelson SS. Co.*, 326 (336).

The Department should exercise all the powers at its command to prevent rate wars of the character evidenced and the bad effects upon our commerce and upon carriers and shippers alike that inhere in such wars. *Id.* (337).

Respondents generally compete with each other and with rail carriers.

This competition, always intense and bitter, has not been conducted along lines of benefit to the general shipping public or to respondents themselves or to the maintenance of an adequate merchant marine. The trade is characterized by individualistic operations, and, in their struggle for traffic, respondents have gone beyond the limits permitted by law. *Intercoastal Investigation, 1935, 400 (405).*

The law does not interfere with competition between carriers when conducted along lawful lines, but there is a limit when the law will interfere and that is when competition becomes destructive and wasteful. *Id.* (430).

A modern, efficient, and economical intercoastal service is in the public interest, and any carrier offering it is entitled to all the protection of law. If the Department allows Shepard or any other carrier not offering that kind of service to set the standard of competition and permits it by means of tariff advantages, such as Shepard claims to itself, to undermine carriers attempting to offer that kind of service, it would inevitably lead to the gradual but sure destruction of such other carriers, which is inimical to the declared policy of the law. *Id.* (430-431).

The line between proper competition and improper competition must be drawn at some place. *Id.* (468).

The use of the cut-rate methods prevents stability. Furthermore, their effect is cumulative, and sooner or later they result in complete demoralization of shipping conditions in the trades in which they are used. *Section 19 Investigation, 1935, 470, (491).*

Certainly, the proper remedy for any unduly high rate is not cutthroat competition that wrecks the entire rate structure. *Id.* (493).

From the record in the investigation it is clear that there exist today and have existed in the past conditions unfavorable to shipping in the foreign trade arising out of and resulting from competitive methods employed by owners and/or operators of foreign countries and that the effects of the world-wide depression upon our export trade have been intensified by these competitive methods. The following practices are specifically condemned as unfair and detrimental to the commerce of the United States and the development of an adequate American merchant marine: 1. The solicitation or procurement of freight by offers 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. *Id.* (498).

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

COMPETITION—Continued.

Carrier—Continued.

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. *Id.* (501).

The rate, established under the competitive pressure mentioned, would afford no criterion of a maximum reasonable rate for the services in question. *Gulf Westbound Intercoastal Soya Bean Oil Meal Rates*, 554 (559).

The Shipping Act recognizes that a carrier may reduce rates below a fair and remunerative basis with the intent of driving a competitive carrier by water out of business without such action constituting the operation of a fighting ship. This is apparent when the fighting-ship prohibition in section 14 is compared with section 19 of that act. *Seas Shipping Co. v. American South African Lines* 568 (579).

Nothing in the Shipping Act prohibits carriers from using every legitimate means to wage economic warfare in their efforts to secure or retain traffic. The only weapon apparently used by defendants is the reduction of rates to a level unremunerative for themselves as well as for their competitors, and this the statute does not prohibit. *Id.* (584).

However disastrous to all concerned a rate war in our foreign commerce may prove, the Congress has not given the Department the power to terminate it. *Id.* (584).

On coffee from the West Coast, defendants contend that the lower rate to New York than to Boston is due to "the competitive action of the transshipping lines meeting the direct service." As the direct service referred to is by Grace Line, Inc., that defendant is in the anomalous position of claiming its transshipment rate is depressed because of its own action. Moreover, the members of the West Coast Conference have the power to initiate and enforce changes in rates applying over direct as well as transshipment routes. *Commonwealth of Mass. v. Colombian SS. Co.*, 711 (715-716).

Section 605 (c) of the Merchant Marine Act, 1936, as amended, by imposing restraints against the duplication of services by subsidized lines, takes away from the parties their opportunity to compete with one another in their respective foreign services, thus destroying the underlying consideration for the agreement. *Dollar-Matson Agreements*, 750 (754).

Section 15 confers authority to regulate competition between carriers in accordance with the needs of the service. *Id.* (755).

We view the exemption granted by section 15 as a means of regulating competition in order to eliminate rate cutting and other abuses which are harmful to shipper and carrier alike. *Id.* (755).

Prejudice; Commodities; Ports:

It is manifest of record that no competition exists between wool and boots and shoes, cotton piece goods, and iron and steel articles.

COMPETITION—Continued.

Prejudice; Commodities; Ports—Continued.

It is, therefore, recognized that the rates on wool cannot be prejudiced by the rates on the latter commodities. *Boston Wool Trade Assn. v. M & M T.*, 24 (30).

There being no competition of importance between peanuts shipped from two ports, further consideration of claim of unjust prejudice must be denied. *American Peanut Corporation v. M & M T.*, 78 (79).

Regarding the issue of undue and unreasonable prejudice and disadvantage, the evidence of complainant's witness as to whether Sheboygan and Milwaukee tanneries compete with complainant is in direct conflict. Upon the record, therefore, the allegation as respects section 16 is not sustained. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.* 101 (102).

Contention that arbitrariness on cargo transshipped subject ports to undue and unreasonable disadvantage is not supported in view of slight amount of such cargo and practical competitive conditions which respondents have to meet in order to participate in carriage of the traffic. *Everett Chamber of Commerce v. Luckenbach SS. Co.*, 149, (152-153).

Carrier's practice to name tariff rates and charges lower by fixed percentages than those of its competitors for like transportation in intercoastal commerce between points on the Atlantic coast and points on the Pacific coast results in undue and unreasonable advantage to it and in undue and unreasonable prejudice and disadvantage to the carriers named and is unjust and unreasonable. *Intercoastal Investigation, 1935, 400 (462).*

The competition which a shipper faces is not limited to shipments moving on the same vessel with his shipment, and the possibilities of discriminations, preferences, and prejudices are not removed by giving the same rates to all shippers of the same commodity on the same vessel. *Section 19 Investigation, 1935, 470 (495).*

The competition met by protestants in the sale of soya bean oil meal on the Pacific coast may be considered only in so far as it is a factor affecting the value of the service to the shipper. The Department has no authority to reduce a rate primarily to protect an industry from foreign or domestic competition. *Atchison, T. & S. F. Ry. Co. v. Interstate Commerce Commission*, 190 Fed. 591. That function lies within the managerial discretion of the carrier. *Gulf Westbound Intercoastal Soya Bean Oil Meal Rates*, 554 (560).

Undue prejudice or preference is not established by a mere showing of lower rates on a competitive commodity. There must also be a showing of the character and intensity of the competition, of the specific effect of the rate relation on such competition, and that the difference has operated to shipper's disadvantage in marketing the commodity. *Johnson Pickett Rope Co. v. Dollar SS. Lines*, 585 (587).

It is only in measuring value of service that consideration may be given to the competition that protestants meet in the eastern markets with lumber from Canada, Russia, the South, and elsewhere, because the Commission has no authority to reduce a rate primarily to protect an industry from foreign or domestic competition. *Eastbound Intercoastal Lumber*, 608 (620-621).

COMPETITION—Continued.

Prejudice; Commodities; Ports—Continued.

Ordinarily, under section 16 of the Shipping Act, 1916, there must be a competitive relation between persons, localities, or traffic before undue preference can arise, and the undue prejudice must be of such kind as will result in positive advantage to the one unduly preferred. Moreover, it is essential to show the specific effect of the alleged prejudicial rate or practice upon the flow of the traffic and the marketing of the commodity. *Paraffine Companies v. American-Hawaiian SS. Co.*, 628 (629).

As a general rule, there must be a definite showing that the preference and prejudice complained of is undue and unreasonable in that it actually operates to the real disadvantage of the complainant. To do this it is of primary importance that there be disclosed an existing and effective competitive relation between the prejudiced and preferred shipper. *H. Kramer & Co. v. Inland Waterways Corp.*, 630 (633).

In order to establish undue preference, undue prejudice of some other shipper should be shown. To do this it is of primary importance that there be disclosed an existing and effective competitive relation between the prejudiced and preferred shipper. *Phelps Bros. Co. v. Cosulich*, 634 (638).

The basis of complainants' allegation that the existing relationship between the rates on flour and bulk wheat is prejudicial to the latter commodity is not clear. The extent of competition, if any, between the commodities is not demonstrated, and there is no proof that the rate situation has in any manner operated to complainants' disadvantage in marketing wheat. Intervening flour interests contend that rates on wheat and flour should be on an exact parity because a lower rate on wheat would enable southeastern mills to secure northwestern wheat and market the flour at a price advantage over flour from the northwest. But the Commission has no authority to adjust rates primarily to protect an industry from domestic competition. *Tri-State Wheat Transp. Council v. Alameda Transp. Co.* 784 (787-788).

Complainant seeks to establish that the rates under consideration are unduly prejudicial by comparing the rate on wallboard with the 23-cent rate on pulpboard; and by pointing out that scrap paper bears the same rate as baled rags valued at \$28 per ton. There is no proof that competition exists between the compared commodities or that the allegedly preferential rates have had any injurious effect upon complainant's business. *Celotex Corp. v. Mooremack Gulf Lines*, 789 (792).

COMPLAINTS. See SHIPPING ACT, 1916; REPARATION; SEAL OF NOTARY PUBLIC.

CONFERENCE. See AGREEMENTS UNDER SECTION 15.

CONFISCATION.

Unfavorable financial returns upon respondent's operations as a whole cannot justify rates on leather if they are unreasonable, and reduction of such rates, if by the usual tests they are found unreasonable, is not confiscation but is a proper exercise of the regulatory function. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (106).

CONGRESSIONAL DEBATES.

Although senatorial discussions are, perhaps, not the approved source of information from which to determine the meaning of the language of the statute, review of legislative expressions has been felt desirable in view of importance of conclusions. *American Peanut Corporation v. M. & M. T. 90 (94).*

CONSOLIDATED CLASSIFICATION. See also COMMODITY RATES.

Classification ratings are generally the highest which a particular article should bear under normal conditions, and it may be stated as a matter of accepted principle that to assign an article a commodity rate which is higher than its applicable class rate is indicative of some unusual circumstance or circumstances incident to the transportation of that article which specially justifies the increased rate. *American Peanut Corporation v. M. & M. T. 78 (83).*

By its express provision rule 34 of the official classification related to shipments "loaded in or on cars." In and of itself it was, therefore, in no respect applicable to port-to-port shipments by water. *Muir-Smith Co. v. G. L. T. Corporation 138 (141).*

The Board found, 1 U. S. S. B. 138, that rule 34 of the classification did not apply to all-water shipments. *Oakland Motor Car Co. v. G. L. T. Corporation 308 (309).*

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. *Armstrong Cork Co. v. American-Hawaiian, 719 (724).*

CONSTITUTION OF THE UNITED STATES.

Decisions of the United States Supreme Court demonstrate the fallacy of the contention that, should continuance of differentials be countenanced, such action would be in contravention of article 9, section 1, of the Constitution of the United States, which prohibits preferring a port in one State over a port in another State. *Port Utilities Commission of Charleston v. Carolina Co., 61 (70).*

CONTRACT CARRIERS. See also SHIPPING ACT 1916.

Although the act does not define contract carriers, this term includes 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 specific 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. *Intercoastal Investigation, 1935, 400 (458).*

It is hardly necessary to state that the provisions of the Intercoastal Shipping Act, 1933, and those provisions of the Shipping Act, 1916, governing common carriers by water in intercoastal commerce also apply to contract carriers in intercoastal commerce. Such provisions of law the Department may not waive. *Id. (458).*

The Intercoastal Shipping Act, 1933, does not differentiate contract from common carriers. Both are the same for all of its purposes. It prohibits one and the other from engaging or participating in intercoastal transportation unless all the rates, charges, rules, and regulations have been published and filed with the Department. It cannot too strongly be stressed that failure of a carrier, whether contract or common, to properly publish and file its rates is as serious a violation of the act

CONTRACT CARRIERS—Continued.

as its failure to observe such rates after they have been published and filed. *Id.* (461).

Respondents have engaged, or are engaged, in transportation each as a contract carrier by water in intercoastal commerce without proper tariffs on file with the Department, in violation of section 2 of the Intercoastal Shipping Act, 1933. *Id.* (463-464).

The filing requirement on contract carriers is imposed by the Intercoastal Shipping Act, 1933, which states that the term "common carrier by water in intercoastal commerce" for the purposes of the 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. The words "contract carrier" as there used have a meaning. In the absence of statutory definition, a particular meaning has been placed upon them by the report. As to each case as it arises, the question, one of fact, is whether the operations of the carrier fall within the meaning given the words "contract carrier." From the charter between The Union Sulphur Company and A. C. Dutton Lumber Corporation it is clear that in transporting the cargo of the latter company The Union Sulphur Company falls within the meaning of such words. To follow the exceptions of The Union Sulphur Company and San Francisco Chamber of Commerce would be the equivalent of saying that such words are meaningless. As long as they remain in the statute, it is the duty of every contract carrier to file tariffs as contemplated by the act. The filing of copy of the charter by the charterer does not satisfy such filing requirement. *Id.* (468).

CONTRACTS WITH SHIPPERS.**In General:**

Whether an agreement was entered into, its terms, and other matters looking to a determination of the contractual relations and rights of the parties pursuant to it are clearly not within Board's jurisdiction to consider. *Boston Wool Trade Assoc. v. Oceanic SS. Co.*, 86 (89).

Apparently, if there is liability under the contract of affreightment for failure of defendants to furnish cargo space within the time agreed upon, any recourse of complainant is before a court of competent jurisdiction. *Pacific Lumber & Shipping Co. v. Pacific-Atlantic SS. Co.*, 624 (627).

To order cancellation of existing cannery contracts or the alteration of the method of serving canneries was not deemed necessary or expedient where approximately 50 percent of the Southeastern Alaska business handled by the carriers was cannery business, many of the canneries were located at out-of-the-way points, and steamers frequently made a detour of more than 20 miles waste. *Alaska Rate Investigation*, 1 (12).

Tariffs:

The law prohibits special arrangements between shippers and carriers unless the terms thereof are fully disclosed in the tariff. *Intercoastal Rate Investigation*, 1935, 400 (416).

In paragraph 6, it is stated that the rate and carload minimum weight shall not in any event exceed the rate and carload minimum weight specified in the contract. Such clause at law is deemed to have been agreed to in contemplation of the powers of Congress to legislate

CONTRACTS WITH SHIPPERS—Continued.

Tariffs—Continued.

and of the Department to enforce the law. The rate and minimum weight in the tariff afford the only legal basis upon which freight charges may be collected, and any agreement to the contrary cannot be sanctioned by the Department. *Id.* (455).

As the Intercoastal Shipping Act, 1933, requires the publication and filing of all the rates, charges, rules, and regulations for or in connection with intercoastal transportation, from which a carrier may not depart except after notice and in the manner prescribed by that statute, which affords shippers an opportunity to protest any such change and as the Shipping Act, 1916, prohibits all unreasonable rates, charges, rules, and regulations and condemns discriminations that would give an undue preference or disadvantage, there is no need for a shipper to make a special contract with a carrier in order to entitle himself to intercoastal transportation for his goods at the same rates and charges and under the same terms and conditions as the goods of his competitor are transported. *Id.* (456).

Nothing in the acts has deprived carriers of the right to contract, and, subject to the prohibitions mentioned, they are free to make special contracts looking to a legitimate increase of their business. If such contract is entered, at law the parties may be taken to have done so subject to possible changes in the published rates, charges, rules, and regulations in the manner fixed by the statute, to which they must conform. *Id.* (456).

It cannot too strongly be stressed that the terms and conditions of the tariff may not be waived or changed by private agreements with shippers. *Id.* (456).

In 1931 carriers were prohibited by section 18 of the Shipping Act, 1916, from charging rates higher than those published and properly filed, but there was no specific prohibition against their making contracts with shippers at lower rates. In the cited case the court recognized such contracts as not unusual and stated that the practice was then well known. *C. W. Spence v. Pacific-Atlantic SS. Co.*, 624 (626).

Lumber-berth-quantity-allowance rules found to contravene the provisions of section 14 of the Shipping Act, 1916, which forbids the making of any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered. *Transportation of Lumber Through Panama Canal*, 646 (650).

Exclusive Patronage:

The benefits which accrue to a common carrier if it may make lower rates to those who ship by it exclusively are plain, and that such a policy may be advantageous to the carrier which practices it may be granted, but it has long since been recognized that those who conduct a public employment must forego many methods of obtaining business and holding it which are permissible in private enterprise. *Eden Mining Co. v. Bluefields Fruit & SS. Co.*, 41 (44).

In *Menacho et al. v. Ward et al.*, 27 Fed. 529, the status of the common law with respect to exclusive-patronage contracts by common carrier is fairly represented. It pronounces the common-law doctrine that such contracts are lawful only in the event that they are made with a view that in return for the lower rate the carrier shall receive from the shipper regular consignments of freight, or a given number of ship-

CONTRACTS WITH SHIPPERS—Continued.

Exclusive Patronage—Continued.

ments, or a certain quantity of merchandise for transportation. *Id.* (44).

Applicable to the case in hand is the language used in *W. U. Tel. Co. v. Call Pub. Co.*, 181 U. S. 92, where the court said: "All individuals have equal rights both in respect to service and charges. Of course such equality of right does not prevent differences in the modes and kinds of service and different charges based thereon. But that principle of equality does forbid any difference in charge which is not based upon difference in service, and even when based upon difference of service must have some reasonable relation to the amount of difference and cannot be so great as to produce an unjust discrimination." *Id.* (45).

The contention that the substantial equality of treatment contemplated by sections 16 and 17 of the Shipping Act, 1916, was accorded since complainants were extended full opportunity to avail themselves of the lower rates by agreeing to the same condition which contract shippers had accepted, is as unconvincing here as when used in support of other kinds of unjust discrimination resulting from unfair conditions imposed by carriers upon shippers. Under the statute, the complainants, as members of the shipping public, were entitled to have their shipments carried at the same rates as other patrons who received identical service. This right attached to each individual transportation transaction as such and was not to be predicated upon any condition imposed by respondent restricting complainants' freedom of choice as to what carrier or carriers they should elect to patronize in connection with subsequent shipments. *Id.* (46).

United States v. Prince Line, Ltd., et al., 220 Fed. 230, distinguished from *Eden Mining Co. v. Bluefields Fruit & Steamship Co.*, 1 U. S. S. B. 41. *Id.* (46).

Case of *Rawleigh v. Stoomvaart, et al.*, 1 U. S. S. B. 285, distinguished from *Eden Mining Co., et al. v. Bluefields Fruit & Steamship Co.*, 1 U. S. S. B. 41; *Rawleigh v. Stoomvaart*, 285 (290-291).

Contracts in *Atlantic Refining Co. v. Ellerman & Bucknall SS. Co.*, 1 U. S. S. B. 242, distinguished from contract in the *Eden Mining* case, 1 U. S. S. B. 41. *Atlantic Ref. Co. v. Ellerman & Bucknall SS. Co.*, 242 (252-253).

Complainant has been and is receiving frequent and satisfactory transportation service maintained with heavy investment by respondents in a long-distance trade with the unqualified support of practically all other shippers than complainant through the use of the contract-rate system in its simple form. Complainant, except as to rate, is accorded every advantage of such service similarly as are such other shippers, although it has the liberty of at any time patronizing any competition destructive of the stability and regularity of such service. In return for the rate disadvantage which it incurs in the capacity of a noncontract shipper, there must, in fairness, be considered the prospect not only of recoupment by complainant but of its obtaining through the exercise of such liberty advantages in rates over those shippers who have agreed to confine their shipments to the respondents. *Rawleigh v. Stoomvaart*, 285 (292).

CONTRACTS WITH SHIPPERS—Continued.

Exclusive Patronage—Continued.

The contract-rate practice as a practice is not new, and by implication it must be said to have received approbative attention at the hands of a committee of Congress after a lengthy and painstaking investigation of combinations and practices of carriers by water. It has presently almost universal practical application, being used in multitudinous daily transactions by carriers the world over. Like the method of charging rates upon a weight or measurement basis and, in interstate trades, the carload-less carload mode of rate making, it is a system of rate application which finds acknowledged adaptability in ocean transportation. An important attribute of it is equality of rate treatment as between large and small shippers. By contracting with a group of lines under the contract system prevailing in this trade, the small shipper is assured of adequacy of service and of receiving the same rate as that charged the large shipper of the same commodity. *Id.* (292-293).

The Shipping Act, which closely parallels the recommendations of the legislative committee, does not forbid the contract-rate practice as such. *Id.* (293).

It is not persuasive that respondents' practice is unlawful because of absence of materially different service before and since inauguration of such practice by them. Manifestly, a basic reason for the inauguration of the contract-rate practice was to secure protection to the carriers of the established services, maintenance of which required heavy capital and overhead expenditures. These considerations, it would appear, justified adoption by the respondents of every reasonable measure, such as the contract-rate practice per se, to assure the stability of competitive conditions necessary for the continuance of the regularity and frequency of service required by shippers in the trade and which, except for introduction of such practice, might well have become impossible. *Id.* (293).

Rates assessed under contract-noncontract-rate system on black Lampung pepper from the Netherlands East Indies to New York, N. Y., and New Orleans, La., not shown to be in violation of section 14, 16, or 17 of the Shipping Act, 1916. *Id.* (293).

The contract contained in the schedule under suspension excludes carriers from participating in the transportation under consideration and creates a monopoly in favor of a competitor, which is unlawful. 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. *Intercoastal Rates on Silica Sand From Baltimore, Md.*, 373 (375).

It is said the contract-rate system was adopted to obtain some degree of stability in the rates. Undoubtedly this was one of its effects, at least as to the rates on shipments of contracting shippers, but another effect of this practice is to exclude other carriers as may offer from participating in the transportation of the contracted tonnage. In the *Eden Mining* case, it was held that the exaction of higher rates from complainants than from shippers who had agreed to give the respondent their exclusive patronage subjected complainants to undue and unreasonable prejudice and disadvantage, and

CONTRACTS WITH SHIPPERS—Continued.

Exclusive Patronage—Continued.

constituted unjust discrimination between shippers. It is true only one carrier was there involved, but to permit the members of the Gulf conference to publish and charge rates depending upon the execution of exclusive-patronage contracts would be permitting them to do collectively what carriers individually are prohibited from doing. Two carriers were involved in the Menacho case and in principle the situation as to the Gulf carriers cannot be distinguished from the one there involved. *Intercoastal Investigation*, 400 (452). Contracts of the character in question do not constitute a transportation condition as to warrant a difference in transportation rates. *Id.* (452).

It is clear that, when intercoastal carriers were not required to file the rates charged shippers, but only their maximum rates, and carriers freely engaged in rate wars, the contract-rate system served a useful purpose, but conditions have been changed by the *Intercoastal Shipping Act, 1933*, which requires that, unless specifically authorized by the Department, rates may not be changed on less than thirty days' notice to the public and also authorizes the Department, either upon complaint or upon its own initiative, to suspend proposed changes in the rates and enter upon hearings concerning the lawfulness thereof. *Id.* (454).

It will be noted that, under paragraph 1 of the form of agreement, Calmar reserves the right to fix the maximum quantity to be carried on any of its vessels and that, under paragraphs 3 and 6 thereof, the shipper obligates itself to tender a certain minimum number of carloads or tons. In these respects, the contracting shippers are placed at a disadvantage as compared with noncontracting shippers, for it is the right of shippers to ship in any quantity they choose and the obligation of carriers to carry the quantity tendered to them, due regard being had for the proper loading of the vessel and the available tonnage, and such matter cannot be the subject of contracts. *Id.* (454-455).

The practice of members of Gulf Intercoastal Conference to exact higher rates and charges from shippers who have not executed so-called rate contracts with them than from shippers who have done so, for like intercoastal transportation, is unlawful, in violation of sections 16 and 18 of the *Shipping Act, 1916*. *Id.* (463).

The contract-rate systems of Calmar and Shepard are in violation of section 2 of the *Intercoastal Shipping Act, 1933*, and sections 16 and 18 of the *Shipping Act, 1916*. *Id.* (463).

The *Rawleigh* case involved transportation in foreign commerce; the issues there are distinguishable from the issues here, and that decision should have no controlling effect on intercoastal transportation. *Id.* (467).

Rawleigh v. Stoomvaart et al., 1 U. S. S. B. 285, and *Gulf Intercoastal Contract Rates*, 1 U. S. S. B. B. 524, as distinguished. *Gulf Intercoastal Contract Rates*, 524 (529-530).

It is clear that the real purpose of the suspended rates and rule is to prevent shippers from using the lines of other carriers and to discourage all others from attempting to engage in intercoastal transportation from and to the Gulf. *Id.* (530).

CONTRACTS WITH SHIPPERS—Continued.

Exclusive Patronage—Continued.

It should be understood that the Department is not sanctioning all contract-rate systems in foreign commerce. Whether any such system is lawful is a question which must be determined by the facts in each case. *Id.* (530).

The Department finds the contract system provided for in the schedules under suspension not justified by transportation conditions in the trade involved and unduly and unreasonably preferential and prejudicial, in violation of section 16 of the Shipping Act, 1916. *Id.* (530).

Allegation that defendants have established and are maintaining a system of exclusive-patronage contracts under agreements or understandings not filed or approved pursuant to section 15 has not been sustained. *Phelps Bros. & Co. v. Consulich*, 684 (689).

As stated in *Gulf Intercoastal Contract Rates*, 1 U. S. S. B. B. 524, with reference to contract-rate systems in foreign commerce, whether any such system is lawful is a question which must be determined by the facts in each case. *Id.* (639).

Complainant found to be entitled to membership in the Adriatic, Black Sea, and Levant Conference on equal terms with each of the defendants, and the conference agreement and contracts 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. *Id.* (641).

That section 15 confers authority to regulate competition between carriers in accordance with the needs of the service was stated by the U. S. Supreme Court in the case of *Swayne & Hoyt, Ltd., et al. v. United States*, 300 U. S. 297, 305: “* * * We think there was evidence from which the Secretary could reasonably conclude that there was little need for a contract-rate system to assure stability of service. * * * On the other hand, there was substantial evidence from which the Secretary could infer that the contract-rate system would tend to give to the Conference carriers a monopoly by excluding competition from new lines.” *Dollar-Matson Agreements*, 750 (755).

COST OF SERVICE. *See also* VALUE OF COMMODITY; VALUE OF SERVICE; VOLUME OF TRAFFIC.

Obviously, there is objection to the application of data which are based upon the cost of service of water carriers at large to the cost of service rendered by the Metropolitan Steamship Line, and the probative force of evidence on this point is weakened by its generality. *Boston Wool Trade Assoc. v. Eastern S. S. Lines*, 36 (37).

Greater cost of service due to more sailings would seem to be gross and to be dissipated by greater tonnage carried. *American Peanut Corp. v. M. & M. T.*, 78 (81).

The probative value of conclusion concerning cost is necessarily impaired by absence of facts upon which it is based. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (105).

Value is an important element of rate making, but cost of service is also a factor, and, hence, it is often true that charges for transporting a cheap article are greater in proportion to its value than charges for transporting a high-grade article. *Atlas Waste Mfg. Co. v. Ny. P. R. S. S. Co.*, 195 (196-197).

COST OF SERVICE—Continued.

Depreciation in a country's currency is often followed by a compensating increase in domestic prices and the general expenses of doing business, and, had the carriers encountered such an increase in cost of services furnished by them to the Canadian shipper, there would exist one of the main reasons by which carriers can justify exacting increased compensation from shippers. Rates in Canadian Currency, 264 (277).

The lack of evidence on the point does not warrant the assumption that there is no difference in the cost of services to New York and Philadelphia. Philadelphia Ocean Traffic Bureau v. Export SS. Corporation, 538 (542).

The value of respondents' evidence in regard to the cost of service is necessarily impaired by the fact that no attempt was made to itemize all of the cost factors; also, the failure to submit the underlying supporting data from which the accuracy of the figures can be tested. Nevertheless, the cost study affords, in a general way, a rough guide in view of the increased operating expenses since 1934 and considering the fact that, ordinarily, substantial additions should be made to out-of-pocket cost in order to reflect all the cost that may be fairly allocated to the service plus a reasonable margin of profit to the carrier. But, even though the study were unusually comprehensive and exact, the cost developed thereby, though entitled to considerable weight, could not be accepted as controlling since due consideration must also be given to the value of the service to the shipper. Gulf Westbound Intercoastal Soya Bean Oil Meal Rates, 554 (560).

As a general rule, a maximum reasonable rate should in principle be no lower than the cost of service to the carrier plus a reasonable profit and no higher than the reasonable worth of the service to the shipper. *Id.* (560).

The increases in respondents' operating expenses for the first half of 1936 over 1933 would be more persuasive of increased costs of operation generally if, in addition, there had been shown for each year the volume of revenue tonnage and the operating expenses and revenues so that the unit cost per payable ton could be determined. It may also be said, in connection with protestants' showing of increased gross operating revenue of respondents over the year 1933, that such statistics do not mean much unless accompanied with a statement of the corresponding operating expenses and the return on the recorded property investment that is thereby produced. Eastbound Intercoastal Lumber, 608 (621-622).

It must be recognized that operating 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. Sugar From Virginia Islands, 695 (699).

While the increases authorized in Commodity Rates Between Atlantic and Gulf Ports, 1 U. S. M. C. 642, were granted in recognition of the carriers' revenue needs, such costs of operation must be fairly distributed over all cargo transported. Celotex Corporation v. Mooremack Gulf Lines, 789 (792).

CURRENCY. See PREJUDICE.

DAMAGES. See REPARATION.

1 U. S. M. C.

DEFERRED REBATES.

In recent years, the use of the practices set forth has become increasingly prevalent, due apparently to the growing realization by foreign-flag operators of the vulnerability of our conferences, which, by the Shipping Act, 1916, are prohibited from using the deferred-rebate system employed almost universally in the export trades of other countries as a protection against such competition. Section 19 Investigation, 1935, 470 (490).

Payments to shippers of automobiles by W. and M. through A. D. T. found to have been an unjust device or means to obtain transportation of property by water at less than the rates or charges which would otherwise apply and to have been unduly preferential, in violation of section 16 of the Shipping Act, 1916, but not to have been deferred rebates within the purview of section 14 of the act. Payments to Shippers by W. & M. SS. Co., 744 (749).

DELIVERY.

The carrier's undertaking is not only to transport but also to deliver cargo to consignees because transportation, as the United States Supreme Court often has said, is not completed until the shipment arrives at the point of destination and is there delivered. Assembling and Distributing Charge, 380 (384).

Although respondents admit it is their obligation to make proper delivery of the cargo, they urge that delivery beyond ship's side is a separate operation, the cost of which should be borne by the cargo. This view conflicts with that of the United States Supreme Court as expressed in *Brittan v. Barnaby*, 62 U. S. 527, 533, 535. Id. (384).

If the shipper pays for delivery at ship's tackle and does not receive it but, instead, is obliged by the steamship companies to take delivery from place of rest on dock, which delivery costs the carriers not more but less, he may not be compelled to pay an additional charge upon the assumption that he has received an additional service. The United States Supreme Court has held that a carrier may not charge the shipper for the use of its general-freight depot in merely delivering his goods for shipment, nor charge the consignee of such goods for its use in merely receiving them there within a reasonable time after they are unloaded. It is not within the power of the carriers by agreement in any form to burden shippers with charges for services they are bound to render without any other compensation than the customary charges for transportation. Id. (385).

The record shows that it is impracticable for carriers to accept possession or make delivery of general cargo at ship's hook, and, if, as used in the rule, "ship's tackle" means ship's hook, the expense of moving such cargo from and to point of rest on the dock when that service is performed for the convenience of respondents should be included in the intercoastal rate. Intercoastal Investigation, 1935, 400 (416-417).

When delivery is made to a lighter, rail car, barge, river steamer, or truck for movement beyond the port, the shipment ordinarily is checked by the intercoastal carrier by number of cases or packages and general shipping mark, and there is no detailed sorting by any carrier other than by Shepard. A charge is imposed upon deliveries to trucks, but there is no charge when shipments are delivered to other conveyances. There is also a similarity of treatment in deliveries to a lighter whether for local delivery or for a rail haul, but the charge applies only upon the local de-

DELIVERY—Continued.

livery. In this respect, the rule is unduly prejudicial and preferential. Intercoastal Segregation Rules, 725 (734).

The rule requires the payment of charges by local consignees who perform their own sorting, or who employ warehouses to perform that service at places other than the piers and who are willing to take delivery of their shipments by general shipping mark with reasonable despatch within free time. It forces those who have no need for and who do not request parcel-lot delivery to contribute to the expense incident to such delivery when it is requested and performed. In this respect, the rule is unjust and unreasonable. *Id.* (734).

Shipments are tallied when received from the shipper and are checked against the bill of lading when delivery is made at the port of discharge. This check is made for the carrier's protection as assurance that delivery is being made of the entire bill-of-lading quantity. Some sorting on the pier also is necessary to insure proper delivery of mixed shipments. These services, performed for the convenience of the carrier in effecting normal delivery, should be included in the published rate. *Id.* (735).

The rule applies to shipments discharged at all Atlantic and Gulf ports. Respondents presented no testimony regarding operating conditions at ports of discharge other than New York and New Orleans. Protestants, however, presented testimony concerning conditions at other Atlantic and Gulf ports, showing that in many instances the charge would apply on shipments that required no sorting, as, for instance, where deliveries are made in one lot by general shipping mark and where the cargo is transferred to local warehouses for sorting. It is reasonably clear from protestants' testimony that the rule as it is now published gives little, if any, consideration to the manner in which shipments are handled at the ports named above and that its operation will be unjust and unreasonable. *Id.* (735).

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. Parcel-lot delivery may require somewhat different handling on the pier than is ordinarily the case, but it is improper to assess any part of the cost thereof against a consignee who does not request or receive extraordinary delivery. *Id.* (736).

Gulf respondents referred to the constantly advancing wage scales for stevedores and for pier labor, but labor costs are incurred in ordinary loading and unloading operations, and it is not possible upon the record to determine what proportion may be properly applied to special sorting or extraordinary delivery services. A scale of charges for parcel-lot deliveries based upon pier labor alone is open to question; in fact, protestants claim that basis is unreasonable on the theory that the sorting service is not reasonably related to the service of delivery. There is some merit in that contention since for two sortings the charge would be 1 cent per 100 pounds or approximately 20 cents per ton. Yet, any number of deliveries might be made without charge. At San Francisco, it was testified that the extra cost of checking parcel-lot deliveries on west-bound traffic was 30 cents per ton and of piling canned goods on the pier by kinds, sizes, brand, grade, or submark was 66 cents a ton. It is doubtful that costs in the Gulf or on the Atlantic seaboard are sufficiently lower to

DELIVERY—Continued.

successfully defend even the minimum charge under the rule. Shippers of enclosures in pool shipments protest the sliding scale on the ground that buyers want to know their actual delivered costs. This is not possible when the total number of sortings which the entire shipment will require is unknown to either shipper or consignee. In general, the Commission is of the opinion that all costs involved in the service should be reflected in the charge. But, since the principal justification for any charge lies in the special delivery facilities, the charge should be based on the service of delivery, and, irrespective of the number of deliveries, a uniform charge should be made. *Id.* (736-737).

Practice of respondents operating to Atlantic coast ports in making deliveries by kind, size, brand, and grade without charge while assessing a charge for parcel-lot deliveries by submark found unduly preferential and prejudicial. *Id.* (737).

Split-delivery:

Measure of adjustment necessary to effect removal of the undue prejudice and preference determined. *Associated Jobbers of Los Angeles v. American-Hawaiian SS. Co.*, 198 (207-208).

The according to carload shipments which are split-delivered at two or more ports the same rates and/or charges as are assessed similar carload shipments delivered solid at one port will constitute undue and unreasonable preference and undue and unreasonable prejudice as between persons and descriptions of traffic. *Associated Jobbers of Los Angeles v. American-Hawaiian SS. Co.*, 161 (168).

Refusal of defendants to provide split-delivery service Atlantic coast ports while providing such service in connection with the same commodities at Pacific coast ports not shown to be violation of sections 16 and 18. *Paraffine Cos. v. American-Hawaiian SS. Co.*, 623 (629).

No charge will be assessed against a straight shipment of one kind and which consists of only one size, brand, or grade; in fact, under rule 2 (g) such a shipment could not lawfully be delivered in parcel lots either with or without charge. But, apparently, it is respondents' intention to continue parcel-lot deliveries, for, as announced by counsel, upon the assessment of a charge under rule 54, any number of parcel-lot deliveries of a single shipment will be made. To accord a greater privilege to a mixed shipment than is accorded to a straight shipment would constitute undue preference and prejudice, in violation of section 16 of the Shipping Act, 1916. The conclusion, therefore, is inescapable that unlawfulness may result under the tariffs as they are now published. *Intercoastal Segregation Rules*, 725 (734-735).

The practice of respondents operating to Atlantic-coast ports in making deliveries prior to February 17, 1938, by kind, size, brand, and grade, without charge while at the same time collecting a charge for parcel-lot deliveries by submark was unduly preferential to consignees or other persons who received such deliveries by other than submark and unduly prejudicial to those who took delivery by submark, in violation of section 16 of the Shipping Act, 1916. *Id.* (734).

DEPRESSED RATES. *See* COMPETITION.

DESIRABILITY OF TRAFFIC.

A large volume of port-to-port traffic consisting of a commodity which is uniform in package, adaptable and convenient for stowage, desirable from a labor standpoint, low in value, and entailing minor risk undoubtedly requires the most substantial reasons to justify the higher rates projected by the suspended tariff. *Wool Rates From Boston to Philadelphia*, 20 (23).

Wool is shipped in uniform bags or bales, requires no special equipment and only a minimum amount of attention in handling, and is readily adaptable for stowage with other shipments. These facts are indicative of its greater desirability as traffic from the standpoint of liability assumed by the carrier for loss or damage. *Boston Wool Trade Assn. v. M. & M. T.*, 24 (29).

The publication and filing of a tariff imposes an obligation upon a carrier to serve the ports or places named therein, and a refusal to book cargo, if at the time space is available, for the sole reason that more profitable bookings are available elsewhere, is not sanctioned by the Shipping Acts. *Sugar From Virgin Islands*, 695 (698).

DETRIMENT TO COMMERCE. See **AGREEMENTS UNDER SECTION 15; COMPETITION; NONCOMPENSATORY RATES.**

DEVELOPMENT RATES:

The carriers have indicated their willingness to consider a reduction in the rate if the complainant or anyone else will submit data indicating a reasonable possibility of developing business. It is expected that conferences will at all times give careful consideration to such requests and supporting data. *Edmond Weil v. Italian Line*, 395 (399).

While the ideal function of a reasonable rate is to facilitate the widest distribution of a commodity, the question of extending promotional rates for that purpose rests primarily within the managerial discretion of the carriers. They are entitled to demand, and the Commission has no alternative but to prescribe or approve, a maximum reasonable rate. *Eastbound Intercoastal Lumber*, 608 (620).

DEVICES TO DEFEAT APPLICABLE RATES.

The issuance by respondents of through bills and according through rates for the two local transportation movements concerned in the proceeding is prohibited by section 16 of the Shipping Act, which makes unlawful the furnishing by subject carriers of transportation at less than their regular rates through false billing or by other unfair device or means. *Pablo Calvet & Co. v. Baltimore Insular Line*, 369 (371).

Respondents publish carload and less-than-carload rates. However, some of them consolidate less-than-carload shipments of some shippers and make up what is known as pool cars, which are split to effect delivery. This is an unlawful device for the purpose of defeating the less-than-carload rate, not only without proper tariff rate or rule, but repugnant to a rule to the contrary contained in their own tariffs. *Intercoastal Investigation*, 400 (449).

It is clear that A. D. T. was neither a common carrier, a forwarder, nor a bona fide soliciting agent. It was a dummy corporation promoted by officers and agents of W. and M. through which certain shippers who were owners of stock were given rebates in the form of stock dividends as an inducement to ship over W. and M. The practice enabled such shippers to secure transportation at less than the rates which would otherwise apply, unjustly discriminated against shippers who were required to pay the

DEVICES TO DEFEAT APPLICABLE RATES—Continued.

regular tariff rate for the same service, and constituted unfair competition with other carriers engaged in the same trade. *Payments To Shippers by W. & M. SS. Co. 744 (748-749).*

The Commission regards any such form or device by which any part of the freight rate paid for transportation is refunded to shippers as a violation of law which cannot be too strongly condemned. *Id. (749).*

Payments to shippers of automobiles by W. and M. through A. D. T. found to have been an unjust device or means to obtain transportation of property by water at less than the rates or charges which would otherwise apply. *Id. (749).*

DIFFERENTIALS. *See also* RATE STRUCTURE.

The theory that a carrier is justified in burdening a port with a differential for the sole and only reason that the cost of operation from that port is greater than from some other port is not concurred in; it is obvious that many elements, such as volume of traffic, competition, distance, advantages of location, character of traffic, frequency of service, and others are properly to be considered in arriving at adjustment of rates as between ports. *Port Utilities Commission of Charleston v. Carolina Co., 61 (69).*

Decisions of the United States Supreme Court demonstrate the fallacy of the contention that, should continuance of differentials be countenanced, such action would be in contravention of article 9, section 1, of the Constitution of the United States, which prohibits preferring a port in one State over a port in another State. *Id. (70).*

In the conference agreement as approved March 9, 1934, there was no provision for differential rates, but members were advised by the Department that the approval of the agreement without a provision for a rate differential in favor of slow cargo vessels maintaining direct service to ports covered by the agreement was without prejudice to any action that the Department might take in the event that a carrier operating such a service should seek admission to the conference. *Wessel, Duval & Co. v. Colombian SS. Co. 390 (392).*

Under the prior conference agreement, participated in by the complainant and most of the respondents in the proceeding, a rate differential of ten (10) percent was allowed in favor of vessels operated by complainant and certain other lines in the conference. The record shows that this differential was agreed to by the conference to avoid a rate war to preserve stability in the trade. It is also shown that the Brazil River Plate and Havana Steamship Conferences allow a differential as between cargo vessels and passenger vessels. The facts and circumstances under which these particular differentials came into existence are not shown, but, in any event, the establishment of a system of differential rates by voluntary action of these groups of steamship lines does not create a precedent in so far as the initiation of such a system by government decree is concerned. Furthermore, the establishment by the conference involved of different rates for transshipment lines does not necessarily require the establishment of the same or any differential as between vessels affording direct service. *Id. (392).*

Atlantic and Gulf/West Coast of South America Conference Agreement not shown to be unlawful, and an order by the Department requiring respondents to admit complainant to membership in the conference with a rate differential found not justified. *Id. (394).*

DIRECTION. *See* REASONABLENESS.

DISCONTINUANCE OF SERVICE.

Upon the record the reality as an emergency situation of discontinuance by an on-carrier of its business enterprise is not shown; nor is it apparent why such discontinuance, generally infrequent and foreknowledgeed, cannot be made by cancellation of the particular through route and joint rates in the normal manner prescribed by the Commission's tariff regulations. The schedules should provide for notice to consignee, or the person to whom notice of arrival would be issued in the event the goods were delivered at the billed destination of interrupted on-carrier service due to on-carrier strike, vessel accident or breakdown, or other similar on-carrier emergency situation and that the goods will be held for disposition by him at the transshipment port. A revision of the rule concerned which would remove the objections instanced and carry out, as far as may be, the purpose of respondents is as follows: Through joint rates named in this tariff are applicable except when service of the participating on-carrier, has, due to strike, vessel accident or breakdown, or other similar emergency situation, been interrupted. In the event of such interruption, the consignee, or the person to whom notice of arrival would be issued in the event the goods were delivered at the billed destination, will be mailed arrival notice in which specific reference will be made to the existence of the on-carrier emergency situation and to this rule, and upon expiration of the free-time period applicable to cargo billed to the transshipment port as final destination the goods will be held at the transshipment port for disposition by the consignee, consignor, or owner thereof, as the case may be. Rates, charges, rules and regulations applicable to such goods will be those applicable under this tariff to cargo billed to the transshipment port as final destination. Intercoastal Joint Rates Via On-Carriers, 760 (764).

Upon brief the canal respondents question the Commission's jurisdiction under any circumstances to order cancellation of the suspended schedules involved in the proceeding. Their argument in this relation refers to the absence of any provision in the Shipping Act, 1916, as amended, similar to paragraph 18 of section 1 of the Interstate Commerce Act. Notwithstanding such absence, pertinent provisions of the Shipping Act to which respondents are amenable are absolute. For example, section 16 of 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 the Commission's duty, under the act, to order its removal. In the instant proceeding, no facts are disclosed which tend to prove that the proposed discontinuance of rates or services will result in undue or unreasonable prejudice and disadvantage. The record amply supports respondents' position that cancellation of the through routes and joint rates to Vancouver concerned are justified. Westbound Intercoastal Rates to Vancouver, Wash., 770 (773-774).

DISCRIMINATION. *See also* PREJUDICE; REASONABLENESS; CONTRACTS WITH SHIPPERS; CARGO SPACE ACCOMMODATIONS.

Rates on used pianos from New York, N. Y., to Constantinople, Beirut, and other Levantine ports not shown to be violative of section 17 of the Shipping Act, 1916. Eastern Guide Trading Co. v. Cyprian Fabre, 188 (191).

DISCRIMINATION—Continued.

Section 17 of the statute is inapplicable to common carriers by water in interstate commerce. *Fir-Tex Inc. Board Co. v. Luckenbach S. S. Co.*, 258 (258); *Johnson Pickett Rope Co. v. Dollar S. S. Lines*, 585 (586); *Macon Cooperage Co. v. Arrow Line*, 591 (591).

Rule concerning declaration of terminal docks and acceptance of cargo by carriers found unjustly discriminatory, unfair, and ambiguous. *Oakland Chamber of Commerce v. American Mail Line*, 314 (318).

As the parties to the agreement are not in any way connected with and do not exercise any control over the terminals at which lower charges are assessed, no discrimination is attributable to them so long as they uniformly apply at their own terminals the charges covered by their agreement. *Terminal Charges at Norfolk*, 357 (358).

What constitutes discrimination is a question of fact to be determined in each particular instance. *Eastbound Intercoastal Rates From Mt. Vernon*, 360 (362).

A connecting carrier may not discriminate against another connection when conditions are alike. Otherwise, it would coerce the public to employ one competitor to the exclusion of another or deprive one competitor of business which under freedom of selection by the public would be given to it; and it is a violation of law for an on-carrier to charge more on traffic interchanged with one connection than with another when the service rendered is substantially the same. *Intercoastal Investigation, 1935*, 400 (440-441).

It is well settled that the existence of unjust discrimination and undue prejudice and preference is a question of fact which must be clearly demonstrated by substantial proof. *Philadelphia Ocean Traffic Bureau v. Export S. S. Corp.*, 538 (541); *H. Kramer v. Inland Waterways Corporation*, 630 (633).

Section 17 of the Shipping Act, 1916, applies only to common carriers by water in foreign commerce. *Id.* (631); *Tri-State Wheat Transp. Council v. Alameda Transp. Co.*, 784 (785).

Defendants found to have unfairly treated and unjustly discriminated against complainant in the matter of cargo space accommodations, due regard being had for the proper loading of the vessels and the available tonnage. *Hernandez v. Bernstein*, 686 (691).

DISMISSAL ON MOTION.

Upon complainant's petition, proceeding involving alleged unlawful rates on linen goods from Antwerp, Belgium, to New York, N. Y., discontinued. *Lesem Bach & Co. v. I. M. M.*, 232 (233).

Carrier admitted to conference; proceeding discontinued. *Dollar S. S. Lines v. P. & O.*, 262 (263).

Complainant joined with defendants in a petition requesting that the complaint be dismissed. The removal of the difference in rates to which the complaint was directed and the cancellation of the agreements attacked render unnecessary further action by the Department. *Atlantic Refining Co. v. Ellerman & Bucknall S. S. Co.*, 531 (532).

Petition to withdraw complaint and discontinue proceeding concerning agreement between Cunard White Star Limited, Bibby Line Limited, British & Burmese Steam Navigation Company Limited, and Burma Steamship Company Limited, granted. *U. S. Lines Co. v. Cunard*, 598 (599).

Complaint alleging that rates on woolen, worsted, and wool mohair mixed yarns from Atlantic to Pacific ports were and are unreasonable dismissed upon motion of complainant and intervener. *Colorcraft Corporation v. American-Hawaiian S. S. Co.*, 651 (652).

DISMISSAL ON MOTION—Continued.

Complaint alleging agreement between members of the Intercoastal Steamship Freight Association and Gulf Intercoastal Conference to be unduly and unreasonably preferential and prejudicial and unjust and unreasonable dismissed upon motion of complainant. *Inland Waterways Corp. v. Intercoastal S. S. Freight Asso.*, 653 (655).

After the investigation was instituted, upon petition of complainants, the complaints were dismissed. *Storage of Import Property*, 676 (677).

Proceeding instituted upon representations of the Government of Puerto Rico that passenger fares and baggage charges of respondents for transportation between the United States and Puerto Rico were unduly prejudicial and unreasonable and that tours were conducted through agreements, understandings, or otherwise in such manner as to subject the ports of Puerto Rico and persons located therein to undue prejudice, discontinued without prejudice upon petition of counsel for respondents, which was concurred in by counsel for the Government of Puerto Rico. *Puerto Rican Passenger Fares and Baggage Charges*, 739 (740).

DISTANCE. *See also* EARNINGS.

The distance from Anchorage to Juneau, Alaska, is 1,051 miles and from Seattle, Wash., to Juneau is 880 miles, but the rates from Anchorage to Juneau are between 40 and 50 percent higher than from Seattle to Juneau. On routes of this great distance a difference of 171 miles of itself is not regarded as sufficient justification for this disparity in rates. *Alaskan Rate Investigation*, 1 (11).

Evidence tending to show that in different trades distance to a large extent is disregarded in rate making, while admissible, may or may not have considerable probative force. Failure to show similarity of conditions in the trades in respect of cost of operation, character of cargoes, competition, and other matters derogates greatly from the value of evidence. *Port Utilities Commission of Charleston v. Carolina Co.*, 61 (70-71).

While often unimportant, distance is nevertheless a definite factor for consideration in determining the reasonableness of water rates. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (103).

Distance does not figure prominently as a factor in rates for water transportation. *Eastbound Intercoastal Lumber*, 608 (622).

DIVERSION OF TRAFFIC.

Even though some passengers may be diverted from other lines in the same trade, that result in and of itself would not make the suspended tariff unlawful. *Passenger Classifications and Fares, American Line S. S. Co.*, 294 (304-305).

Statements of record as to threatened diversion or the probability of future diversions of traffic if the charges remain effective do not justify a finding that the agreement is unlawful. *Terminal Charges at Norfolk*, 357 (358).

DIVIDENDS. *See also* EARNINGS.

Whether carrier earns dividends on its operations as a whole affords little light upon the question as to the reasonableness of a rate on a particular commodity. Indeed, the rates on particular commodities may be unreasonably high and yet the carrier fail to realize a fair return from its entire operations. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (106).

DIVISIONS OF RATES.

The reasonableness of the truck rates between San Diego and Los Angeles is a matter within the jurisdiction of the Railroad Commission of the

DIVISIONS OF RATES—Continued.

State of California, and the findings of that Commission cannot be anticipated by the Department. Furthermore, such rates have little, if any, bearing on the reasonableness of rates subject to the jurisdiction of the Department. This observation also applies to protestant's comparison of the division of through transshipment rates between carriers engaged in foreign and Atlantic intercoastal commerce. *Gulf Intercoastal Rates To and From San Diego* (No. 2), 600 (604).

Protestants regard certain allowances and divisions granted by some of the respondents out of their rate as an admission that such rate is not too low. For instance, Calmar, in its tariff SB-I No. 7 under the so-called berth-quantity-allowance rule, provides for reduction from the basic rate on two berthings ranging from 50 cents to \$3.52 for footage shipped, ranging from 1,100,000 board feet to 5,300,001 board feet and over. If this is a legitimate inference to be drawn against Calmar, it should not be used to the disadvantage of other respondents who have not seen fit to establish such a rule. *Eastbound Intercoastal Lumber*, 608 (617).

DRYAGE. See *LOADING AND UNLOADING.*

DUMMY CORPORATION. See *DEVICES TO DEFEAT APPLICABLE RATES.*

EARNINGS. See also *FAIR RETURN.*

Disparity in ton-mile earnings over and above that sanctioned by the principle that such earnings should be more for a shorter than for a longer distance should be explained. *American Peanut Corp. v. M. & M. T.*, 78 (81):

Ordinarily, ton-mile earnings from properly aligned rates decrease as distance increases. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (103).

The ton-mile test employed by protestants is subject to the objection that it excludes from consideration the stowage factors of the various commodities and unduly emphasizes the matter of distance, which does not figure prominently as a factor in rates for water transportation. *Eastbound Intercoastal Rates*, 608 (622).

The comparative earnings of the rates in issue form an instructive guide in determining their reasonableness. *Id.* (622).

EMBARGOES.

It is desirable that close cooperation be maintained between the carriers and the shippers, with a view, at all times, to acquainting the latter with the fact of proposed embargoes, as in this way only is it possible to prevent unnecessary movement of freight to wharves and terminals. *Increased Rates*, 1920, 13 (18).

The right of a common carrier to declare an embargo when the circumstances warrant such action is established as is also the fact that the necessity for placing embargoes is a matter to be determined in the first instance by the carrier. On the other hand, an embargo is an emergency measure to be resorted to only where there is congestion of traffic or when it is impossible to transport the freight offered because of physical limitations of the carrier. *Boston Wool Trade Assoc. v. M. & M. T.*, 32 (33).

During the existence of the embargo, the common-carrier obligations of the transportation company are suspended insofar as the embargo has application, and the reality of a situation sufficient to justify this suspension of obligations is requisite if the embargo is to be justified. *Id.* (33).

EMBARGOES—Continued.

During period of embargo, common-carrier status of respondent, as respects direct Savannah-Miami service, was nonexistent, and tariff covering such service was correspondingly inapplicable. *I. C. Helmly Furniture Co. v. M. & M. T.*, 132 (133).

Establishment of embargo on iron and steel articles consigned to Lake Charles, La., and Beaumont, Tex., found justified. Embargo on Iron and Steel, 674 (675).

EQUALIZATION. See **REASONABLENESS**; **RAIL AND WATER RATES**; **TARIFFS**.

EVIDENCE. See also **BURDEN OF PROOF**; **FINDINGS IN FORMER CASES**; **GENERAL INVESTIGATIONS**; **RECORD AS BASIS OF FINDINGS**; **RECORD IN OTHER PROCEEDINGS**; **SIMILARITY OF TRAFFIC, ETC.**; **ADMISSIONS OF UNLAWFULNESS**.

If the tariff condition subjected complainant to undue discrimination, his knowledge or lack of knowledge of such condition is plainly immaterial. *American Tobacco Co. v. C. G. T.*, 53 (56).

A conclusion by the Board that the statute has been violated must be predicated upon evidence that is concrete and directly pertinent to the issues raised. *Rates in Canadian Currency*, 264 (275).

It is possible for practices long lawful to become unlawful due to changed conditions, but a showing of unlawfulness must be conclusive and definite. *Id.* (281).

The principal witness for Nelson thinks the proposed rates are compensatory, but such opinion testimony without any supporting data is of little value. *Intercoastal Rates of Nelson S.S. Co.*, 326 (335).

It may be that the conclusions are based on specific facts bearing upon the question of discrimination and prejudice, but the Department cannot accept such conclusions without an examination of the underlying facts upon which they are based. *Philadelphia Ocean Traffic Bureau v. Export S.S. Corporation*, 538 (541).

EXCLUSIVE PATRONAGE. See **CONTRACTS WITH SHIPPERS**.

FAIR RETURN. See also **EARNINGS**.

The reasonableness of the rates depends largely upon whether they yield a fair return upon the value of the carriers' property devoted to the public service. *Alaskan Rate Investigation*, 1 (4).

Howsoever important to individual shippers, testimony directed toward specific situations conceived to be discriminatory or detrimental to their respective interests is not illuminative in determining whether or not proposed advances in rates as a whole are reasonable and will yield a fair return, or more than a fair return, upon the value of the property of the carriers devoted to the public service. *Increased Rates, 1920*, 13 (14).

While the evidence submitted by the transportation company to the effect that its common carrier operations as a whole were unprofitable is admittedly of value, obviously this is not a controlling determinant of the reasonableness of the particular rates in question. Indeed, rates on particular commodities may be unreasonably high and yet the carrier fail to realize a fair return from its entire operations. *Wool Rates From Boston to Philadelphia*, 20 (21).

Whether carrier earns dividends on its operations as a whole affords little light upon the question as to the reasonableness of a rate on a particular commodity. Indeed, the rates on particular commodities may be unreasonably high and yet the carrier fail to realize a fair return from its entire operations. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (106).

FAIR RETURN—Continued.

The interest of the public demands that the carriers shall receive revenues which will enable them to keep their fleets in good repair and maintain efficient service. *Intercoastal Rates of Nelson S. S. Co.*, 326 (336).

FIGHTING SHIPS.

Defendants, on brief, after a review of court decisions on the subject of fighting ships, contend that a fighting ship is a vessel placed on berth out of regular course at rates less than those charged on vessels regularly scheduled by the carrier or carriers operating such vessels. Inasmuch as the cases on which defendants rely arose prior to the enactment of the Shipping Act, 1916, which, itself, as quoted above, defines a fighting ship, the decisions in such cases are not necessarily controlling. The thing condemned, however, is clearly a device of some sort by means of which carriers endeavor to drive another carrier out of business. *Seas Shipping Co. v. American South African Line*, 568 (578).

The Shipping Act recognizes that a carrier may reduce rates below a fair and remunerative basis with the intent of driving a competitive carrier by water out of business without such action constituting the operation of a fighting ship. This is apparent when the fighting-ship prohibition in section 14 is compared with section 19 of that act. *Id.* (579).

Defendants not shown to have resorted to any device that involved the operation of a fighting ship. *Id.* (579).

Defendants not shown to have operated fighting ships from North Atlantic ports of the United States to South and East Africa in violation of section 14 of the Shipping Act, 1916. *Id.* (584).

FINDINGS IN FORMER CASES.

The Board cannot agree that conclusions arrived at in one case must be accepted as constituting a precedent necessarily to be followed as of binding authority in a subsequent proceeding where dissimilar facts are presented. Manifestly, each complaint must stand on the facts disclosed on its own record. *Rawleigh v. Stoomvaart*, 285 (291).

An examination of the cases relied upon by defendants in support of their denial of complainant's application reveals that such cases are distinguishable from the instant case either from the standpoint of the issues involved or the essential facts upon which the decisions rest. *Phelps Bros. v. Cosulich*, 634 (641).

FLOATAGE. See LOADING AND UNLOADING.**FOREIGN-FLAG CARRIERS.**

The membership of the North Atlantic conferences is predominantly foreign.

This foreign membership, with votes outnumbering by far those of the American members, dominates the tripartite conference and the rates applicable to American commodities moving in American bottoms from American ports. The result is effective control by foreign lines of an extensive portion of the commerce and much of the shipping of the United States. Manifestly, in view of the responsibility imposed for the upbuilding of an American merchant marine, this situation calls for unequivocal action. *Port Utilities Commission of Charleston v. Carolina Line*, 61 (73).

In recent years the use of the practices set forth has become increasingly prevalent, due apparently to the growing realization by foreign-flag operators of the vulnerability of our conferences, which, by the Shipping Act, 1916, are prohibited from using the deferred-rebate system employed al-

FOREIGN-FLAG CARRIERS—Continued.

most universally in the export trades of other countries as a protection against such competition. Section 19 Investigation, 1935, 470 (490).

From the record in the investigation it is clear that there exist today and have existed in the past conditions unfavorable to shipping in the foreign trade arising out of and resulting from competitive methods employed by owners and/or operators of vessels of foreign countries and that the effects of the world-wide depression upon our export trade have been intensified by these competitive methods. Id. (498).

As a result of the investigation the Department finds, in accordance with the report, that conditions unfavorable to shipping in the foreign trade exist arising out of and resulting from competitive methods and practices employed by owners and operators of foreign-flag ships. Id. (499).

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. Id. (501).

FORWARDERS AND FORWARDING. See also AGREEMENTS UNDER SECTION 15.

Forwarders are subject to the Shipping Act, 1916, and consequently, agreements between carriers and forwarders fall within the purview of section 15 thereof. Gulf Brokerage and Forwarding Agreements, 533 (534).

Agreements regulating charges made for forwarding should state clearly the forwarding services covered and should not include charges by carriers for issuing ocean bills of lading or for performing other services which it is a carrier's duty to perform. Id. (534-535).

The agreements between certain carriers by water in foreign commerce and other persons purporting to fix brokerage commissions and forwarding charges cannot be approved. Id. (535).

Although it may be proper for carriers to refuse to pay brokerage to any broker who solicits for a competitor or receives brokerage from a competitor, the Department will not approve agreements under which the forwarder, whether also a broker or not, would refuse to handle as a forwarder shipments as to which routing by a competing carrier has been specified by the shipper. Id. (535).

FREE SERVICES. See ABSORPTIONS; FREE TIME.**FREE TIME. See also ABSORPTIONS.**

The record is clear that certain respondents incur additional expense by granting excessive free time. This added cost results mainly from extra tiering of cargo, rehandling of shipments, extra hire for clerk, and additional pier rental. But some respondents testified that the privilege is accorded at no additional expense. The absorption by respondents of the extra cost of this service is a valuable concession to those who are advantaged by it and an unreasonable burden on respondents' transportation revenue. Storage of Import Property, 676 (680-681).

FREE TIME—Continued.

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. As a proper part of their transportation service, respondents should allow only such free time as may be reasonably required for the removal of import property from their premises, based on transportation necessity and not on commercial convenience. *Id.* (682).

Free time allowed by respondents on import property at the port of New York should not exceed 10 days, exclusive of Sundays and legal holidays. *Id.* (683).

Respondents found to be engaged in 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, but not shown to be engaged in unlawful practices in connection with the storage or delivery of import property at the other North Atlantic ports involved in the proceeding. *Id.* (683).

Under respondents' interpretation of the schedules in connection with free time, the allowance of different periods as between different consignees would effect inequality of treatment as between shippers and permit undue preference and prejudice, in violation of section 16 of the Shipping Act, 1916. *Intercoastal Joint Rates of On-Carriers, 760 (763-764).*

FREQUENCY OF SERVICE.

Contention that ports are subjected to undue and unreasonable disadvantage when vessels discharge direct is not persuasive in view of infrequency of direct discharge and negligible amount of cargo so delivered. *Everett Chamber of Commerce v. Luckenbach, 149 (152).*

Some weight must be given by the Board to the resultant benefits to the shipping public arising from a more frequent and regular service. *Atlantic Refining Co. v. Ellerman & Bucknall SS. Co., 242 (254).*

A difference in the price of intercoastal transportation attracts traffic to the line naming the lowest rate. This would be accomplished by the suggestions that rates be graduated according to frequency of sailing and time in transit. Such thing, in effect, would be placing a premium on infrequent and slow service and a penalty on the line that would give the service contemplated by law. The incentive for investment in a line that would give a modern, efficient, and economical service would be little, if any, and the result would be calamitous. Furthermore, restrictions as to time in transit from last point of loading to first port of discharge utterly ignore the rights of shippers and receivers of goods located elsewhere. *Intercoastal Investigation, 1935, 400 (428-429).*

The need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920, which states that it is necessary for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels. Section 7 of that act directs the Department to investigate and determine what steamship services shall be established and the type, size, speed, and other requirements of vessels to be employed in such services, and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent services. Section 15 *Investigation, 1935, 470 (497).*

GENERAL INVESTIGATIONS.

In a general investigation into the rates, regulations, and practices of common carriers by water engaged in the transportation of property between ports in the State of Washington and ports in Alaska, testimony relating to specific rates and localities would have been of little assistance in arriving at a proper conclusion as to the reasonableness of the rate schedules as a whole. Alaskan Rate Investigation 1 (8).

Howsoever important to individual shippers, testimony directed toward specific situations conceived to be discriminatory or detrimental to their respective interests is not illuminative in determining whether or not proposed advances in rates as a whole are reasonable and will yield a fair return, or more than a fair return, upon the value of the property of the carriers devoted to the public service. Increased Rates, 1920, 13 (14).

GRADUATED RATES. See FREQUENCY OF SERVICE.

GROUPS AND GROUP RATES.

Practice of limiting port-to-port rates from pier to pier and refusing to group, on one hand, all receiving and delivery points within the so-called Metropolitan Boston Switching District, and, on the other hand, all receiving and delivering points within the free-lighterage limits and waterfront locations of Philadelphia and to apply port-to-port rates to and from such points in connection with Boston-Philadelphia traffic, found not unreasonable or unduly prejudicial. Boston Wool Trade Assoc. v. M. & M. T., 24 (31).

The inevitable resultant of any grouping system is that there is always some disparity between the distance from the various points in a group to a common market. Port Utilities Commission of Charleston v. Carolina Co., 61 (66).

It is natural and consistent with recognized principles of rate structures that the carriers should have in some manner grouped the ports on the Atlantic and Gulf coasts of the United States. *Id.* (66).

Port groupings which have prevailed for a considerable length of time and to which business has accustomed itself should not be disturbed except for very strong and compelling reasons. *Id.* (67).

Grouping of ports on the Atlantic and Gulf coasts of the United States not shown to be unduly discriminatory or otherwise in violation of the statute. *Id.* (67).

As to the allegation that the rates in issue are unreasonable, it should be sufficient to state that the rates of intercoastal carriers, including Calmar and Shepard, are grouped in such manner that generally the same rate, whether a terminal or joint rate, applies between any point on the Atlantic coast and any point on the Pacific coast. Intercoastal Investigation, 1935, 400 (444).

HANDICAP RATES. See RATE STRUCTURE.

HARTER ACT.

Under the Harter Act, it is the duty of carriers to issue ocean bills of lading or equivalent documents as a part of their common-carrier service. Gulf Brokerage and Forwarding Agreements, 533 (534).

Provisions of the Harter Act, the Bills of Lading Act, and other statutes should be construed as imposing upon carriers minimum, not maximum, requirements. Intercoastal Segregation Rules, 725 (736).

HEARING. *See also* RECORD AS BASIS OF FINDINGS; RECORD IN OTHER PROCEEDINGS; DISMISSAL ON MOTION; PROPOSED REPORTS.

The Port Differential case, 1 U. S. S. B. 61, has been referred to in an evident effort to establish precedent for section 15 action by the Board in the case before it. It is obvious that the two cases are not parallel. The Board cannot predicate upon the present record either a disapproval of existing agreements or a finding of lack of merit in complainant's attack against them. Not only respondents, but the other member of the conference, and not only complainant, but all other shippers in the trade, and all ports which might be affected must first be accorded a full and unmistakable opportunity to be heard upon the specific questions involved. *Atlantic Refining Co. v. Ellerman & Bucknall SS. Co.*, 242 (257).

No representative of complainant appeared at the hearing. 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, the complaint will be dismissed for lack of prosecution. *Tagit Co. v. Luckenbach*, 519 (519).

Rates on some of the commodities and several others, filed with the Interstate Commerce Commission, were suspended by that Commission. Because of the similarity of the issues, the Interstate Commerce Commission and the Maritime Commission arranged to hear the cases jointly on the same record, and oral argument was heard before both Commissions sitting together. *Commodity Rates Between Atlantic and Gulf Ports*, 642 (643).

Inasmuch as the case was not submitted until three years after the hearing, the parties were requested to express their attitude toward the desirability of a further hearing for the purpose of bringing the record down to date. In reply they indicated their willingness to stand on the record as made. *San Diego Harbor Commission v. American Mail Line*, 661 (662).

HEAVY LIFT CHARGES. *See* ABSORPTIONS.

HIGH SEAS.

An examination of court decisions and authorities reveals that the term high seas has been variously interpreted. In some instances, it has been construed to apply only to the open ocean capable of international commercial use and in others to embrace rivers, its meaning being determined by the purpose to be accomplished by some particular statute. Bearing in mind that one of the primary purposes of the shipping act is to regulate port-to-port transportation between States and that in describing the waters upon which such transportation should be regulated Congress went so far as to include the Great Lakes, it is clear that Chesapeake Bay is to be regarded as "high seas" within the meaning of the act. *American Peanut Corporation v. M. & M. T.*, 78 (79); *American Peanut Corporation v. M. & M. T.*, 90 (96).

Federal and State decisions directly involving the character of Long Island Sound under different statutes expressly hold that body of water to be high seas. *Thames River Line*, 217 (218).

Applying the criterion enunciated by the United States Supreme Court in *U. S. v. Rodgers*, 150 U. S. 249, that "bodies of water of an extent which cannot be measured by the unaided vision, and which are navigable at all times in all directions, and border on different nations or States or

HIGH SEAS—Continued.

people, and find their outlet in the ocean as in the present case, are seas in fact, however they may be designated," and that "the term (high seas), in the eye of reason, is applicable to the open, unenclosed portion of all large bodies of navigable waters, whose extent cannot be measured by one's vision, and the navigation of which is free to all nations and people on their borders, by whatever names those bodies may be locally designated," the attributes of Long Island Sound unmistakably identify it as high seas. *Id.* (220).

In every connection and for every purpose the regulatory provisions of the Shipping Act are as applicable to the carrier engaged in transportation over the waters of Long Island Sound as they are to other interstate carriers operating elsewhere on coastwise waters. Upon the decided cases and in reason we consider that in every respect such an extensive and important body of water as Long Island Sound is properly high seas within the meaning of section 1 of that act. *Id.* (220).

ILLEGAL RATES. *See also* MAXIMUM RATES; SHIPPING ACT, 1916; INTER-COASTAL SHIPPING ACT, 1933.

Rates on automobiles from Detroit, Mich., to Duluth, Minn., found to have exceeded maximum rates on file. *Muir-Smith Motor Co. v. Great Lakes Transit Co.*, 138 (141-142).

Rate applied on shipments of mayonnaise from Baltimore, Md., to Tampa, Fla., found to have been in excess of maximum rate on file. *Gelfand Mfg. Co. v. Bull S. S. Line*, 169 (171-172).

Charges exacted on shipments of tin cans from Baltimore, Md., to Savannah, Ga., found to have been in excess of maximum rate on file. *Lee Roy Myers v. M. & M. T.*, 192 (194).

Rates charged for transportation of automobiles from Detroit, Mich., to Duluth, Minn., found inapplicable. *Oakland Motor Car Co. v. G. L. T. Co.*, 308 (312).

Rates on oak liquor barrels from Savannah, Ga., to Los Angeles, Calif., not shown to be inapplicable, unreasonable, or otherwise unlawful. *Macon Cooperage Co. v. Arrow Line*, 591 (595).

The misquotation of a rate by the agent of a carrier does not warrant the exaction of a rate other than that applicable. *Texas & Pacific Ry. v. Mugg*, 202 U. S. 242. It also, of itself, affords no basis for a finding that the rate is unreasonable or for an award of reparation by the Commission. *C. W. Spence v. Pacific-Atlantic S. S. Co.*, 624 (625).

Rate on piling from Everett and Tacoma, Wash., to Wilmington, Del., found applicable. *Id.* (626).

Rate on pulpboard boxes, pails, and berry baskets, in mixed carloads, from New York, N. Y., to Pacific-coast ports, found inapplicable in certain instances, but not unjust and unreasonable, and undercharges found outstanding on certain shipments. *Bloomer Bros. Co. v. Luckenbach*, 692 (694).

Coated cotton cloth not shown to have been improperly classified. *Leather Supply Co. v. Luckenbach* 779 (780).

INDUSTRY, PROTECTION OF. *See* COMPETITION.

INJURY. *See* REPARATION.

INSPECTION OF PROPERTY. *See also* DELIVERY.

Protestants direct attention to court decisions which require merchandise to be placed on the pier properly separated so as to be open to inspection by the owner. That there is such an obligation upon a carrier is not

INSPECTION OF PROPERTY—Continued.

open to question, but the service required is not the separation of individual shipments but a separation of each shipment from the general mass of cargo. Intercoastal Segregation Rules, 725 (735).

INTENTION OF SHIPPER. *See* COMMERCE.

INTERCOASTAL SHIPPING ACT, 1933.

Carriers Subject:

The term "common carrier by water in intercoastal commerce" for the purposes of the Intercoastal Shipping Act, 1933, includes 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. The on-carriers are common carriers by water engaged for hire in the transportation of property. Intercoastal Investigation, 400 (445).

Girdwood Shipping Company not shown to be a common carrier by water in intercoastal commerce subject to the Intercoastal Shipping Act, 1933. Schedules of Girdwood Shipping Co., 306 (307).

The record establishes clearly that Hammond Shipping Co., Ltd., is not engaged in intercoastal commerce. It, therefore, is not a common or contract carrier in intercoastal commerce and is not subject to the provisions of the Intercoastal Shipping Act, 1933. The existence of its schedules holding itself out as a subject carrier when it admits that it is not in the trade and will not accept cargo if offered amounts to a false representation, contrary to the letter and spirit of the law. Intercoastal Schedules of Hammond Shipping Co., 606 (607).

Hammond Shipping Company, Ltd., found not to be a common or contract carrier in intercoastal commerce. *Id.* (607).

Tariffs:

The Intercoastal Shipping Act, 1933, requires that schedules shall show all the rates and charges for or in connection with transportation and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates or charges or the value of the service rendered to the consignor or consignee. No changes therein may be made except by the publication, filing, and posting of new schedules plainly showing the changes proposed to be made. The law directs the Department by regulations to prescribe the form and manner in which schedules shall be published, filed, and posted and to reject any schedule filed with it which is not in consonance with law and such regulations. Regulations have been issued pursuant to this mandate. Intercoastal Rates of Nelson SS. Co., 326 (337).

A motion was made that the suspension order be vacated on the ground that it deprives shippers of rates and services which are not in violation of any provision of law which the Department is empowered to correct. A motion to vacate the suspension order was also made based on the ground that "the rates and rules contained in the suspended tariff are lawful in that the same have been permitted to the competitors of this respondent, that the denial of the right of respondent to quote such rates and rules is unduly discriminatory and is beyond the powers of the Bureau and in violation of the Shipping Act, of 1916 and acts amendatory thereto." The powers of the Department to suspend the operation of any schedules filed with it stating a new individual or joint rate, charge, classification, regulation, or practice

INTERCOASTAL SHIPPING ACT, 1933—Continued.

Tariffs—Continued.

affecting any rate or charge, and to enter, either upon complaint or upon its own initiative without complaint, upon a hearing concerning the lawfulness of such rate, charge, classification, regulation, or practice are made clear by section 3 of the Intercoastal Shipping Act, 1933, and the motions are denied. *Id.* (340).

It is the policy of the law that every intercoastal route regardless of how constituted and every service for or in connection with intercoastal transportation shall have a published rate on file with the Department. *Intercoastal Rates To and From Berkeley, Calif.*, 365 (367).

While under the Intercoastal Shipping Act, 1933, no change may be made in the published rates for intercoastal transportation earlier than thirty days after date of posting and filing of the new rate with the Department, unless otherwise authorized by the Department, this does not mean that intercoastal rates are changed every thirty days. *Intercoastal Rate on Silica Sand From Baltimore*, 373 (374-375).

Language could not have made clearer the intent of the legislature than as set forth in section 2 of the Intercoastal Shipping Act, 1933. This section imposes a positive duty on respondents. As one of the principal aims of the law is uniformity in treatment, the requirement of publication is to enable the shipper not only to ascertain from examination of the tariff what the exact rates and charges are to him, but also to his competitor. *Intercoastal Investigation, 1935*, 400 (421).

Every route must have a published rate on file with the Department. *Id.* (440).

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. *Id.* (440).

The requirement of prior notice as regards publication of reductions in rates appears for the first time in the Intercoastal Shipping Act, 1933. *Id.* (444).

The requirement that intercoastal carriers publish each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of the rates or charges, or the value of the service rendered to the consignor or consignee is contained in section 2 of the Intercoastal Shipping Act, 1933. Unless complied with, the shipper will be deprived of the paramount right the statute gives to him to know the price of transportation and services for or in connection therewith to him and his competitors. *Id.* (465).

The law at present in effect not only requires such carriers to file the rates which they charge for transportation, from which they are prohibited to depart, but also prescribes an orderly manner for changing the rates. This includes thirty days' notice to the public.

INTERCOASTAL SHIPPING ACT, 1933—Continued.

Tariffs—Continued.

and this department is given the power to suspend, upon complaint or upon its own initiative without complaint, any proposed change pending a hearing concerning its lawfulness. Gulf Intercoastal Contract Rates, 524 (528-529).

INTRASTATE. See THROUGH ROUTES AND THROUGH RATES; SHIPPING ACT, 1916; INTERCOASTAL SHIPPING ACT, 1933.

JOINT RATES. See THROUGH ROUTES AND THROUGH RATES.

JURISDICTION. See SHIPPING ACT, 1916; WAIVER OF REGULATIONS AND STATUTORY PROVISIONS; REPARATION; TARIFFS.

LEASES.

Defendant Norfolk Tidewater Terminals leases the terminals it operates from the United States of America through the Commission. Complainant in No. 442 alleges breach by defendant of its lease in that at several terminals in Norfolk no truck loading or unloading charge is assessed. Defendant's breach of lease, if any, is not determinative of the issues in No. 442. Whether complainant uses the several terminals indicated, whether complainant's competitors do so, the manner of handling truck traffic at these terminals, and other details pertinent to such issues are not disclosed. Buxton Lines v. Norfolk Tidewater Terminals, 705 (709).

LEGAL RATES. See ILEGAL.

LIGHTERAGE. See LOADING AND UNLOADING.

LIMITATION OF ACTIONS. See REPARATION; WAIVER OF REGULATIONS AND STATUTORY PROVISIONS.

LOADING AND UNLOADING. See also ABSORPTIONS; TARIFFS.

Failure of carriers to adopt marginal track loading of hardwood lumber at New Orleans, or in lieu thereof to assume shippers' expense of unloading not shown to subject the Port of New Orleans to undue prejudice or to give to the ports of Mobile, Gulfport, and Lake Charles undue preference, or to constitute an unjust and unreasonable regulation or practice. Foreign Trade Bureau, New Orleans v. Bank Line, 177 (185-186).

Unloading from rail cars, drayage, lighterage, and floatage, such as are provided for by Rules 4 and 5, are not services that fall upon respondents, for they have no through route arrangements or joint through rates with rail carriers. Such expenses are incurred by them in their struggle to attract traffic to their lines, but such wasteful practices are not sanctioned by law. Intercoastal Investigation, 1935, 400 (414).

That unloading from rail cars, drayage, lighterage, and floatage are not services that fall upon respondents applies with equal force as to loading rail cars, use of such cars, and to transfer of rail shipments from and to vessels of respondent. Id. (418).

No limit is placed upon the amount of car unloading at Philadelphia or top wharfage or car unloading at Baltimore or on-carrying charges on shipments destined to Stockton or Sacramento absorbed by respondent. Also, whether respondent calls direct or not at Oakland, if there absorbs terminal charges of 50 cents per ton and, if it elects to make delivery by barge at such place, it absorbs the cost thereof without specifying such amount. Such rules are not in consonance with law. Id. (419).

MAIL-CONTRACT PAYMENTS.

Neither the flag flown by a carrier nor the circumstance that it receives financial benefits from mail contracts tends in any way to prove or disprove that such carrier has been violating the regulatory provisions of the Shipping Act. Rates in Canadian Currency. 264 (275).

MANAGEMENT. *See also* COMPETITION.

It is to be presumed that all carriers operate both prudently and, with a keen eye for net profits. *Atlantic Refining Co. v. Ellerman & Bucknall SS. Co.*, 242 (250).

The Shipping Act, 1916, was not intended as a substitute for the managerial judgment of carriers. *Joseph Singer v. Trans-Atlantic Passenger Conference*, 520 (523).

MANAGERIAL DISCRETION. *See* MANAGEMENT; DEVELOPMENT RATES.**MAXIMUM RATES.**

A maximum rate is a carrier's highest compensation for the performance of a transportation service. *Intercoastal Rate Investigation*, 108 (111). Report and order rescinded. *Intercoastal Rate Investigation*, 120 (120).

Charges of intercoastal carriers held not to be maximum rates within meaning of section 18 of Shipping Act, 1916, and schedules of the charges held not to be tariffs of maximum rates within meaning of tariff regulations. *Intercoastal Rate Investigation*, 108 (112). Report and order rescinded. *Intercoastal Rate Investigation*, 120 (120).

The requirement of prior notice as regards publication of reductions in rates appears for the first time in the Intercoastal Shipping Act, 1933. Prior to that act, no obligation rested upon carriers to give public notice of such reductions. The law only required the filing of maximum rates, fares, and charges, and prohibited carriers from demanding, charging, or collecting a greater compensation except with the approval of the Board and with 10 days' public notice, which requirement the Board had the power to waive for good cause shown. *Intercoastal Investigation*, 1935, 400 (444).

At the time referred to by the witness, carriers engaged in intercoastal transportation were only required to file their maximum rates. Nothing in the law then in force prevented them from collecting compensation for their services lower than such maximum rates. *Gulf Intercoastal Contract Rates*, 524 (528-529).

As a general rule, a maximum reasonable rate should in principle be no lower than the cost of service to the carrier plus a reasonable profit and no higher than the reasonable worth of the service to the shipper. *Gulf Westbound Intercoastal Soya Bean Meal Oil Rates*, 554 (560).

Respondents are entitled under the law to a maximum reasonable rate, or one that is not so high as to be excessive or extortionate and not so low as to yield less than the cost of service plus a fair profit. In determining whether the proposed rates come within these bounds, the most important considerations are: The probable effect of the rate upon the flow of the traffic, the element of risk involved, the regularity and volume of movement, the value of the commodity, the relation of the rate in question to rates for comparable services, the value of the service to the shipper, and the cost to the carrier of rendering the service. *Eastbound Intercoastal Lumber*, 608 (620).

MEASUREMENT. *See* WEIGHT OR MEASUREMENT.**MERCHANT MARINE ACTS.**

The underlying purpose of the Merchant Marine Act, 1920, and Merchant Marine Act, 1928, as well as of the loans authorized thereby, is to promote the public interest by affording aid in such manner as to result in modern, efficient, and economical transportation service by water. Such service is a public necessity, and anything to promote it is in the public interest. *Intercoastal Investigation*, 1935, 400 (428).

MERCHANT MARINE ACTS—Continued.

The need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920, which states that it is necessary for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels. Section 7 of that act directs the Department to investigate and determine what steamship services shall be established and the type, size, speed, and other requirements of vessels to be employed in such service, and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent service. The American-flag lines who have asked the Department to establish rules and regulations under section 19 of the Merchant Marine Act were brought into existence as a result of this mandate of Congress. The ends sought by this legislation cannot be achieved and this policy will be defeated unless destructive methods of competition can be prevented. Section 19 Investigation, 1935, 470 (497).

To meet the conditions described, the Department "is authorized and directed" under section 19 of the Merchant Marine Act "to make rules and regulations affecting shipping in the foreign trade." *Id.* (498).

Section 1 of the Shipping Act, 1916, excludes from the regulatory provisions of that act every "cargo boat commonly called an ocean tramp." This exemption of tramps from the regulatory provisions of the 1916 act does not place any limitation upon the Department in its promulgation of rules and regulations under section 19 of the Merchant Marine Act, 1920. *Id.* (498).

Exceptions filed refer to *Panama Refining Company v. Ryan*, 293 U. S. 388, decided January 7, 1935, and urge, in substance, that, as Congress has not set up any restrictions or standard, the delegation of powers under section 19 of the Merchant Marine Act, 1920, transcends constitutional limits. Other exceptions filed urge that, as the Shipping Act, 1916, does not specifically confer powers to require carriers by water in foreign commerce to file tariffs and adhere to them, such requirement cannot be imposed by this Department in the guise of a rule or regulation. Exceptions filed by Board of Commissioners of the Port of New Orleans refer to legislation pending in Congress granting additional powers over common carriers by water in foreign commerce and urge that, as the proposed legislation would amend section 19 by writing into the statute the rules recommended in the proposed report, no action should be taken in this proceeding until such legislation has been disposed of. Some of the exceptions filed urge that the proposed rules, if adopted, will unduly interfere with tramp operations and will bring about an unduly rigid rate structure to the detriment of our commerce in markets where this country competes with other countries. In view of the points raised in these exceptions, the rules and regulations recommended in the report of the United States Shipping Board Bureau issued on January 22nd will not be promulgated at this time. *Id.* (500-501).

Both complainant and one of the defendants are part of the American merchant marine, and section 1, Merchant Marine Act, 1920, contains an admonition that in the administration of the shipping laws there be kept always in view the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of an

MERCHANT MARINE ACTS—Continued.

adequate privately owned merchant marine. *Seas Shipping Co. v. American South African Line*, 568 (583).

As stated by the Department of Commerce in *Seas Shipping Co. v. American South African Line, Inc., et al.*, 1 U. S. S. B. E. 568, at 583: “* * * section 1, Merchant Marine Act, 1920, contains an admonition that in the administration of the shipping laws there be kept always in view the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of an adequate privately owned merchant marine.” *Dollar-Matson Agreements*, 750 (755).

MINIMUM WEIGHTS.

Carriers are permitted under the rule to call and accept freight in any quantity from one shipper or supplier at docks located within conference terminal ports other than the declared docks listed in clause “L” of the rule. The same rates apply from the undeclared as from the declared docks, but from the undeclared docks charges are assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. On any additional cargo taken for another shipper or supplier from the same undeclared dock in quantities less than the specified minimum, an additional \$1 per revenue ton is charged. In the northern district, by exception, carriers are permitted to load at such undeclared docks or make divisional rate arrangements on quantities less than the specified minima, provided an additional charge of \$1.50 per revenue ton over the tariff rate is assessed. These provisions of the rule open the door to discrimination; furthermore, on the face of it, there is no justification for the extra charge of \$1 on additional shipments taken at the same undeclared dock since freight charges based on the specified minima are evidently considered sufficient to compensate respondents for the call. *Oakland Chamber of Commerce v. American Mail Line*, 314 (317).

Although the carriers under the rule may call direct at nonterminal ports for freight in any quantity from one shipper or supplier, it is provided that such cargo must be assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. No such restriction, however, is placed on cargo moving from nonterminal ports under the divisional rate agreements permitted under the rule to meet the competition of direct calls by conference members. Vessels handling cargo by direct call at nonterminal ports from one shipper or supplier, subject to the minimum rate requirement set forth above, “are permitted to accept any other additional cargo offering from the same dock in any quantity on the same terms, conditions and rates provided in (e) (1).” This provision of the rule is not free from ambiguity. It will be noted that, while acceptance of additional cargo is permitted, the words “same terms, conditions and rates” may mean that, for example, a shipper or supplier other than the shipper or supplier of the first lot if offering 50 tons is assessed freight charges on the basis of 500 tons. What has been stated in respect of the \$1 extra on additional cargo from docks within conference terminal ports other than declared docks applies here with equal force. *Id.* (317-318).

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

MINIMUM WEIGHTS—Continued.

any undue or unreasonable preference or advantage to any particular person or description of traffic in any respect whatsoever. Intercoastal Rates of American-Hawaiian SS. Co., 349 (351).

If the suspended schedules are allowed to become effective, there would exist conflicting rates of 60 cents, minimum 24,000 pounds, and 87.5 cents, minimum 40,000 pounds, for the same transportation. Normally, when rates are published, based on different minimum weights, the higher rate is made applicable in connection with the lower minimum weight. West-bound Intercoastal Rates on Dates, Figs, Etc., 352 (354).

Rates based on a minimum weight so high as to be available only to one shipper have been found to violate section 16 of the Shipping Act, 1916. Intercoastal Rates of American-Hawaiian SS. Co., et al., 1 U. S. S. B. B. 349. However, the record does not disclose that there are shippers, other than the shipper hereinbefore referred to, making intercoastal shipments of silica sand for manufacture of glass and glassware to points on the Pacific coast or that 500 net tons is too high a minimum on such commodity. Intercoastal Rate on Silica Sand From Baltimore, 373 (375).

It will be noted that, under paragraph 1 of the form of agreement, Calmar reserves the right to fix the maximum quantity to be carried on any of its vessels and that, under paragraphs 3 and 6 thereof, the shipper obligates itself to tender a certain minimum number of carloads or tons. In these respects, the contracting shippers are placed at a disadvantage as compared with noncontracting shippers, for it is the right of shippers to ship in any quantity they choose and the obligation of carriers to carry the quantity tendered to them, due regard being had for the proper loading of the vessel and the available tonnage, and such matter cannot be the subject of contracts. Intercoastal Investigation, 1935, 400 (454-455).

MISQUOTATION OF RATES. See ILLEGAL RATES.

MIXED SHIPMENTS. See also DELIVERY.

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. *Armstrong Cork Co. v. American-Hawaiian SS. Co.*, 719 (724).

Provision for mixed-carload rates on shipments of floor coverings with roofing and building materials from California ports to ports in Oregon and Washington found unduly prejudicial and unreasonable. *Id.* (724).

In according mixture privileges carriers should consider the nature of the commodity, the size of packages in which shipments are ordinarily made, and also other pertinent factors. Intercoastal Segregation Rules, 725 (731).

No charge will be assessed against a straight shipment of one kind and which consists of only one size, brand, or grade; in fact, under rule 2 (g) such a shipment could not lawfully be delivered in parcel lots either with or without charge. But, apparently, it is respondents' intention to continue parcel-lot deliveries, for, as announced by counsel, upon the assessment of a charge under rule 54, any number of parcel-lot deliveries of a single shipment will be made. To accord a greater privilege to a mixed shipment than is accorded to a straight shipment would constitute undue preference and prejudice in violation of section 16 of the Shipping Act, 1916. The conclusion, therefore, is inescapable that unlawfulness may result under the tariffs as they are now published. *Id.* (734).

MONOPOLIES. *See also* CONTRACTS WITH SHIPPERS; AGREEMENTS UNDER SECTION 15.

By contracting with a group of lines under the contract system prevailing in the trade and at issue, the small shipper is assured of adequacy of service and of receiving the same rate as that charged the large shipper of the same commodity. So far from manifesting monopoly, this arrangement is the very antithesis of monopoly. *W. T. Rawleigh Co. v. Stoomvaart*, 285 (292-293).

The contract contained in the schedule under suspension excludes carriers from participating in the transportation under consideration and creates a monopoly in favor of a competitor, which is unlawful. *Intercoastal Rate on Silica Sand From Baltimore*, 373 (375).

Respondent Grace Line, Inc., is the only conference line furnishing a direct through service to ports on the west coast of South America, but the other six conference lines furnish frequent and regular service from Atlantic and Gulf ports with transshipment at the Panama Canal under through-route and joint-rate arrangements with lines serving the west coast of South America. During the year 1933 and the first 6 months of 1934, these transshipment lines carried 65,148 tons of cargo destined to ports on the west coast of South America, which represented 30.66 percent of the entire movement by all conference lines during that period. The conference agreement has since been amended to allow the transshipment lines a rate differential, and under the provisions of the conference contract shippers have the option of selecting the vessels of any carrier which at time of shipment is a member of the conference. It is not apparent that the conference agreement confers a monopoly on respondent Grace Line, Inc. *Wessel, Duval & Co. v. Colombian SS. Co.*, 390 (394).

Carriers are not justified in attempting to restrict traffic to move over their lines. As stated in *Menacho v. Ward*, 27 Fed. 529, involving a substantially similar situation, cited in *Eden Mining Co. v. Bluefields Fruit & SS. Co.*, 1 U. S. S. B. 41 "The vice of discrimination here is that it is calculated to coerce all those who have occasion to employ common carriers * * * from employing such agencies as may offer. * * * If it is tolerated it will result practically in giving the defendants a monopoly of the carrying trade between these places. Manifestly it is enforced by the defendants in order to discourage all others from attempting to serve the public as carriers between these places. Such discrimination is not only unreasonable, but is odious." *Intercoastal Investigation*, 1935, 400 (452).

The prohibition of discrimination means, among other things, that no difference or distinction shall be made in rates that coerce the public to employ one competitor to the exclusion of another or deprive one competitor of business which under freedom of selection by the public would be given to it and thus create a monopoly in favor of another competitor. *Id.* (456).

As stated in *Intercoastal Investigation*, 1935, 1 U. S. S. B. B. 400: " * * * Furthermore carriers are not justified in attempting to restrict traffic to move over their lines. * * * The prohibition of discrimination means, among other things, that no difference or distinction shall be made in rates that coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business which under freedom of selection by the public would be given to it, and thus

MONOPOLIES—Continued.

create a monopoly in favor of another competitor." Gulf Intercoastal Contract Rates, 524 (529).

In the regulation of conference agreements under section 15, the policy of both the United States Shipping Board and the Department of Commerce was to discourage agreements which established a monopoly in favor of a competitor. As stated in Intercoastal Investigation, 1935, 1 U. S. S. B. B. 400, at 456—"The prohibition of discrimination means, among other things, that no difference or distinction shall be made in rates that coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business which under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor." Dollar-Matson Agreements, 750 (755).

MOOT CASES.

The Pennsylvania Co. v. L., N. A. & C. R. Co., 3 I. C. C. 223, and other cases are of one accord in reference to issues which have become moot, and the United States Supreme Court in U. S. v. Hamburg American, 239 U. S. 466, enunciates the established rule and pronounces the disposition applicable in the proceeding before the Board. Marginal Track Delivery, 234 (238).

Since the rate situations complained of have been adjusted the questions presented are moot. If the new adjustment is changed by tariffs hereafter filed, the remedies provided by the Shipping Act, 1916, and Intercoastal Shipping Act, 1933, are available to complainants. Cannery League of Calif. v. Alameda Transp. Co., 536 (537).

After full hearing and submission of the case, the Department, on its own motion, instituted an investigation into and concerning the lawfulness and the propriety of defendant's tariffs remaining on file with the United States Shipping Board Bureau. Prior to hearing defendant voluntarily canceled its tariffs, and the proceeding was discontinued. The questions here presented, therefore, have become moot. Argonaut SS. Line v. American Tankers Corporation, 596 (597).

Respondents filed schedules canceling the suspended rate, which schedules were accepted for filing. By the acceptance of such filing the question of lawfulness of the suspended schedules becomes moot. Eastbound Intercoastal Gulf Sugar Rate, 798, (799).

NATIONALITY OF CARRIERS.

Neither the flag flown by a carrier nor the circumstance that it receives financial benefits from mail contracts tends in any way to prove or disprove that such carrier has been violating the regulatory provisions of the Shipping Act. Rates in Canadian Currency, 264 (275).

NATURAL ADVANTAGES AND DISADVANTAGES. See PREJUDICE; PROFIT TO SHIPPERS.**NONCOMPENSATORY RATES. See also AGREEMENTS UNDER SECTION 15.**

The Shipping Act recognizes that a carrier may reduce rates below a fair and remunerative basis with the intent of driving a competitive carrier by water out of business without such action constituting the operation of a fighting ship. This is apparent when the fighting-ship prohibition in section 14 is compared with section 19 of that act. Seas Shipping Co. v. American South African Line, 568 (579).

Whatever their immediate effect, rates unremunerative or noncompensatory are in the long run detrimental to our commerce, for our commerce embraces not only cargo moving but the instrumentalities employed in moving such cargo. Id. (583).

NONCOMPENSATORY RATES—Continued.

Unremunerative and noncompensatory rates are detrimental to the commerce of the United States. *Id.* (584).

The only weapon apparently used by defendants is the reduction of rates to a level unremunerative for themselves as well as for their competitors, and this the statute does not prohibit. *Id.* (584).

As stated by the Department of Commerce in *Seas Shipping Co. v. American South African Line, Inc.*, et al., 1 U. S. S. B. B. 568, at 583: "If the existence of the agreement were the cause of the low rates the Department's course of action would be reasonably clear. Whatever their immediate effect, rates unremunerative or noncompensatory are in the long run detrimental to our commerce, for our commerce embraces not only cargo moving but the instrumentalities employed in moving such cargo. Both complainant and one of the defendants, American South African Line, are part of the American merchant marine, and section 1, Merchant Marine Act, 1920, contains an admonition that in the administration of the shipping laws there be kept always in view the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of an adequate privately owned merchant marine." *Dollar-Matson Agreements*, 750, (755).

NOTICE OF CHANGES. *See* TARIFFS; SHIPPING ACT, 1916.

ON-CARRIER. *See* SHIPPING ACT, 1916; DISCONTINUANCE OF SERVICE; TARIFFS.

ON-CARRYING CHARGES. *See* LOADING AND UNLOADING.

OPERATION.

Transshipment is a matter of practical necessity in order that the westbound operation may be completed before the eastbound operation begins. It is, of course, normally an important consideration to the carriers to have their vessels bare of cargo before starting to load for the eastbound voyage. *Everett Chamber of Commerce v. Luckenbach SS. Co.*, 149 (152).

ORAL ARGUMENT. *See* HEARING.

ORDERS.

In some of the exceptions to the proposed report, it is stated that there are carriers serving New York who have entered the import trade since the proceeding was initiated, and it is suggested that they may not be subject to the order entered herein. All persons subject to the Shipping Act, 1916, whose operations come within the scope of the proceeding will be expected to conform their practices to the principles announced in the report. *Storage of Import Property*, 676 (683).

It is intimated by certain interveners that respondents may, in effect, nullify the order by assessing merely nominal charges for storage after free time. This, of course, would plainly violate the spirit of the order, but the Commission may not in advance impute to respondents a desire to defeat the order through subterfuge. *Id.* (683).

OTHER PERSONS. *See* SHIPPING ACT, 1916; TERMINAL FACILITIES; AGREEMENTS UNDER SECTION 15; TARIFFS.

PARTIES.

The record discloses that the Oakland Motor Car Co. and Gray Motor Car Co. are trade names under which Martin Rosendahl and Duluth Auto Exchange, Inc., respectively, operated, and that freight charges in Docket No. 100 were paid by Martin Rosendahl and in Docket No. 101 by Duluth Auto Exchange, Inc. The filing of a claim in the trade name of an individual or a corporation is a filing by the individual or the corporation that operates thereunder. *Oakland Motor Car Co. v. Great Lakes Transit Corp.*, 308 (310).

PARTIES—Continued.

The claim was filed with the United States Shipping Board prior to the institution of bankruptcy proceedings. A trustee in bankruptcy may prosecute a suit commenced by a bankrupt prior to adjudication either by the institution of a new action or by intervening in the proceeding commenced by the bankrupt. If, however, the trustee neither sues nor intervenes, there is no reason why the bankrupt himself should not continue the proceeding. If the trustee will not sue and the bankrupt cannot sue, it might result in the bankrupt's debtor being discharged of an actual liability. It is believed that the law does not contemplate such a result. Hearing upon complaints filed with the Board discloses the assessment and collection of illegal charges in violation of section 18 of the Shipping Act, 1916. Section 22 of that act authorizes an award of reparation to the party injured. Martin Rosendahl was injured the moment he paid the charges and was the person directly damaged by the collection in 1923 of the illegal rates. His claim accrued at once, and the law administered by the Department does not inquire into later events. *Id.* (310-311).

PASSENGER. *See* COMPETITION; UNIFORMITY OF RATES, ETC.

PERCENTAGE OF INCREASE IN RATES.

The reasonableness of rates cannot be determined by considering only the amount of the percentage of increase, which may indicate that the former rates were too low rather than that the present rates are excessive. Alaska Rate Investigation, 1 (6).

The fundamental question is whether the proposed rate is reasonable regardless of the amount of the advance. Gulf Westbound Intercoastal Soya Bean Oil Meal Rates, 554 (560).

PHILIPPINE ISLANDS.

Defendants are engaged in the transportation of property by water between Manila, Philippine Islands, and the United States, and in respect of such transportation are common carriers by water in interstate commerce. Johnson Pickett Rope Co. v. Dollar S.S. Lines, 585 (585).

PILOTAGE. *See* LOADING AND UNLOADING.

POLICY. *See* AGREEMENTS UNDER SECTION 15.

POOL CARS. *See* DEVICES TO DEFEAT APPLICABLE RATES.

PORT DIFFERENTIALS. *See* DIFFERENTIALS.

PORT PREFERENCE. *See* CONSTITUTION OF UNITED STATES.

PRACTICE. *See also* UNREASONABLENESS; PREJUDICE.

Practice of routing shipments via water from port of transshipment to destination, charging of same through rates thereon as for shipments moving via rail from said transshipment port, and refusal to absorb wharfage charges, State toll, and war tax, not shown to have been unlawful. Intercoastal Rates of Nelson S.S. Co., 326 (340).

Owing to its wide and variable connotations, a practice, which, unless restricted, ordinarily means an often repeated and customary action, is deemed to apply only to acts or things belonging to the same class as those meant by the words of the law that are associated with it. In section 18 the term "practices" is associated with various words, including "rates," "charges," and "tariffs." Intercoastal Investigation, 1935, 400 (432).

PREJUDICE. See also REASONABLENESS; DISCRIMINATION: CONTRACTS WITH SHIPPERS; AGREEMENTS UNDER SECTION 15.

In General:

The manifest purpose of the provision of section 16 prohibiting undue or unreasonable preference or advantage and undue or unreasonable prejudice or disadvantage and the provision of section 17 prohibiting unjust discrimination between shippers is to require common carriers subject to the statute to accord like treatment to all shippers who apply for and receive the same service. *American Tobacco Co. v. C. G. T.*, 53 (56).

The discrimination inhibited by sections 16 and 17 is that which is undue, unreasonable, or unjust. *Port Utilities Commission of Charleston v. Carolina Co.*, 61 (65).

Issue of unjust prejudice would necessarily be confined to rates of carrier serving both ports involved in rate comparison. *American Peanut Corp. v. M. & M. T.*, 78 (79).

The standard by which to determine when an advantage to one or a prejudice to some other is undue or unreasonable is not difficult to determine. Whenever it is sufficient in amount to be substantial and of importance to either the one receiving the advantage or to the one suffering the prejudice, it must be held to be undue or unreasonable. *Assoc. Jobbers of Los Angeles v. American-Hawaiian SS. Co.*, 161 (167-168).

Sections 16 and 17 of the act do not forbid all discriminatory, preferential, or prejudicial treatment, nor does section 14 declare unlawful all contracts based on the volume of freight offered. To bring a difference in rates within the prohibition of these sections it must be shown that such a difference is not justified by the cost of the respective services, by their values, or by other transportation conditions. *Atlantic Refining Co. v. Ellerman & Bucknall SS. Co.*, 242 (250).

Not all preferences and advantages are condemned by law, but only those that are undue or unreasonable. *Intercoastal Investigation*, 1935, 400 (444).

The record does not show that the preference or advantage to the Sacramento shippers or the prejudice and disadvantage to shippers using complainant's terminals, if any, resulting from the rates under consideration is of the character condemned by law. Undoubtedly, an effect of the rates in issue was to deprive complainants of revenue they formerly received from the handling of the traffic involved at their terminals, but this alone does not constitute a violation of the law the Department enforces. *Id.* (444).

The Shipping Act, 1916, prohibits unjustly discriminatory rates between shippers and the giving to any particular person of any undue or unreasonable preference or advantage or the subjecting of any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 19 *Investigation*, 1935, 470 (495).

It is well settled that the existence of unlawful preference and prejudice is a question of fact to be clearly demonstrated by substantial proof. As a general rule there must be a definite showing that the preference and prejudice complained of is undue and unreasonable in that it actually operates to the real disadvantage of

PREJUDICE—Continued.

In General—Continued.

the complainant. To do this, it is of primary importance that there be disclosed an existing and effective competitive relation between the prejudiced and preferred shipper. *H. Kramer & Co. v. Inland Waterways Corp.*, 630 (633).

An underlying purpose of the Shipping Act, 1916, is to prevent every form of favoritism based upon the relations of the shipper with the carrier as a customer and to place all shippers, the large and small, the steady and occasional, upon a plane of equality in the right to service. For this reason, that act condemns and makes unlawful every regulation, device, or subterfuge which undertakes to give to anyone an advantage based upon conditions other than those inhering in the transportation itself and alone. *Intercoastal Investigation*, 1935, 400 (451-452).

Section 16 of the Shipping Act, 1916, prohibits any common carrier by water, either alone or in conjunction with any other person, directly or indirectly, from allowing any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means. That section also prohibits any such carrier from making or giving any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever or subjecting any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 17 of that act prohibits carriers in foreign commerce from demanding, charging, or collecting any rate or charge which is unjustly discriminatory between shippers or ports and requires every such carrier to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. These provisions of law place an obligation on every common carrier by water in foreign commerce to make its rates public and available on equal terms to all shippers. Section 19 *Investigation*, 1935, 470 (501-502).

In view of the competitive situation, the cancellation of the joint rates involved would result in undue and unreasonable preference and advantage to Oakland and Richmond and shippers there located and undue and unreasonable prejudice and disadvantage to Berkeley and Emeryville and shippers there located, in violation of section 16 of the Shipping Act, 1916. *Intercoastal Rates To and From Berkeley, Calif. (No. 2)*, 510 (512).

It is well settled that the existence of unjust discrimination and undue prejudice and preference is a question of fact which must be clearly demonstrated by substantial proof. As a general rule, there must be a definite showing that the difference in rates complained of is undue and unjust in that it actually operates to the real disadvantage of the complainant. In order to do this, it is essential to reveal the specific effect of the rates on the flow of the traffic concerned and on the marketing of the commodities involved and to disclose an existing and effective competitive relation between the prejudiced and preferred shipper, localities, or commodities. Furthermore, a

PREJUDICE—Continued.

In General—Continued.

pertinent inquiry is whether the alleged prejudice is the proximate cause of the disadvantage. Manifestly, the general representations made by witnesses for complainant do not afford convincing proof of the alleged disadvantages under which they and other interests at Philadelphia operate or that the rate situation is solely responsible therefor. *Philadelphia Ocean Traffic Bureau v. Export SS. Corp.*, 538 (541).

Prejudice to one shipper to be undue must ordinarily be such that it shall be a source of positive advantage to another. *California Pkg. Corp. v. American-Hawaiian SS. Co.*, 543 (545).

The language of section 16 forbidding "any undue or unreasonable prejudice or disadvantage in any respect whatsoever" is specifically directed against undue preference and every other form of unjust discrimination against the shipping public. *Armstrong Cork Co. v. Hawaiian SS. Co.*, 719 (723).

Practices:

Practice in apportioning available space in vessels not shown to be unduly prejudicial to shippers of wool and related articles or unduly preferential of shippers of other commodities. *Boston Wool Trade Assoc. v. M. & M. T.*, 32 (35).

It is evident that the purpose of Congress in enacting the provision of section 16 prohibiting undue or unreasonable preference or advantage and undue or unreasonable prejudice or disadvantage and the provision of section 17 prohibiting unjust discrimination between shippers was to impose upon common carriers within the purview thereof the duty of charging uniform rates to all shippers receiving a similar transportation service. *Eden Mining Co. v. Bluefields Fruit & SS. Co.*, 41 (45).

The exaction of higher rates from complainants than from other shippers for like service subjected complainants to undue and unreasonable prejudice and disadvantage and constituted unjust discrimination between shippers. *Id.* (48).

Charges exacted for transportation of collect shipments found unduly prejudicial and unjustly discriminatory to extent they exceeded prepaid charges on like shipments from and to same ports plus such additional costs as respondent was compelled to absorb over and above those accruing in connection with prepaid shipments. *American Tobacco Co. v. C. G. T.*, 53 (57).

Rate adjustment on traffic from North Atlantic, South Atlantic, and Gulf ports to foreign destinations not shown to be unduly prejudicial or unjustly discriminatory. *Port Utilities Commission of Charleston v. Carolina Co.*, 61 (71).

Rule applying arbitrariness to Everett, Bellingham, and Olympia, Wash., and Astoria, Oreg., not shown to subject those ports to undue and unreasonable disadvantage. *Everett Chamber of Commerce v. Luckenbach SS. Co.*, 149 (153).

Issuance of an order requiring change in the currency practices of carriers not warranted. *Rates in Canadian Currency*, 264 (281).

The imposition of the 30-cent charge at Los Angeles, which is not imposed at San Francisco, measured by the transportation standards as referred to in the Illinois Central Railroad case, falls squarely within

PREJUDICE—Continued.

Practices—Continued.

- the type of preference and prejudice which section 16 of the Shipping Act condemns. Assembling and Distributing Charge, 380 (387).
- Schedule of proposed changes in classification of passenger accommodations and fares on vessels operating between New York, N. Y., and San Francisco, Calif., not shown to be unduly preferential and prejudicial or unjust and unreasonable. Passenger Classification and Fares, American Line SS. Corp., 294 (305).
- Refusal by defendants to pay commissions to persons other than their authorized agents on passenger tickets and orders for transportation purchased for customers for passage on defendant lines not undue preference or prejudice. *Joseph Singer v. Trans-Atlantic Passenger Conference*, 520 (523).
- The uniformity of treatment contemplated by the Shipping Act is a relative equality based on transportation conditions only. *Philadelphia Ocean Traffic Bureau v. Export SS. Corp.*, 538 (541).
- Rates from San Diego, Calif., to the Orient and rules, regulations, and practices with respect thereto found unduly prejudicial. *San Diego Harbor Commission v. American Mail Lines*, 661 (669).
- Rules pertaining to segregation of cargo by intercoastal carriers in Pacific-Atlantic or Pacific-Gulf of Mexico trade found unduly prejudicial and preferential and unreasonable. *Intercoastal Segregation Rules*, 725 (737).

Rates; Commodities; Service:

- Rates on cigars from Philadelphia, Pa., to Pacific-coast ports not shown to be violative of section 16 or 18 of the Shipping Act, 1916, as alleged. *York County Cigar Mfrs. Assoc. v. American-Hawaiian SS. Co.*, 209 (212). The maintenance of rates on blacksmith coal and farm products from Puget Sound ports to Juneau, Alaska, lower than rates from Anchorage, Alaska, to Juneau is unduly preferential to Puget Sound ports and unduly prejudicial to Anchorage. *Alaska Rate Investigation*, 1 (11-12).
- Rates on green coffee from Colombia, South America, to New York, N. Y., and Boston, Mass., found unduly preferential and prejudicial and unjustly discriminatory. *Commonwealth of Mass. v. Colombian SS. Co.*, 711 (716). Fact that western packers are awarded a lower rate on eastbound canned coffee than complainant pays on like shipments westbound is not sufficient to sustain allegation of undue prejudice. *Calif. Pkg. Corp. v. American-Hawaiian SS. Co.*, 543 (545).
- Rates on cotton linters and cottonseed-hull fiber or shavings from Galveston, Tex., to New York, N. Y., and from Houston, Tex., to Philadelphia, Pa., not shown to be in violation of section 16 or 18 of the Shipping Act, 1916. *Thomas G. Crowe v. Southern SS. Co.*, 145 (148).
- Any-quantity rate on cotton piece goods and cotton factory products from Atlantic and Gulf ports to Pacific ports not shown to be unduly prejudicial or unreasonable. *Ames Harris Neville Co. v. American-Hawaiian SS. Co.*, 765 (769).
- Rate on Fir-Tex from Portland, Oreg., to Boston, Mass., New York, N. Y., and Philadelphia, Pa., not shown to be unreasonably prejudicial or unjust or unreasonable. *Fir-Tex Ins. Board Co. v. Luckenbach SS. Co.*, 258 (261).

PREJUDICE—Continued.

Rates; Commodities; Service—Continued.

Rates on leather from Montague, Muskegon, and Grand Haven, Mich., to Chicago, Ill., not shown to be unduly prejudicial. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (106).

Schedules proposing to change effective-date rule in connection with east-bound intercoastal lumber rates found unduly prejudicial. *Intercoastal Lumber Rate Changes*, 656 (660).

Rates on shipments of case oil from United States to South African ports not shown to be unduly or unreasonably prejudicial or unjustly discriminatory. *Atlantic Refining Co. v. Ellerman & Bucknall SS. Co.*, 242 (255-256).

Rates on olive oil and general cargo from Italy to Philadelphia, Pa., not shown to be unduly preferential or prejudicial or unjustly discriminatory. *Philadelphia Ocean Traffic Bureau v. Export SS. Corp.*, 538 (542).

Rate on prepared roofing paper from Baltimore to Miami not shown to be unduly or unreasonably prejudicial. *Continental Roofing & Mfg. Co. v. B. & C. SS. Co.*, 74 (77).

Rates on peanuts from Norfolk, Va., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., not shown to be unduly prejudicial. *American Peanut Corp. v. M. & M. T.*, 78 (84).

Carrier's practice in establishing and maintaining rates from New Orleans on clean rice originating at interior Louisiana points and destined to Puerto Rico designed to extend to such traffic the same or lower through rate as for transportation of clean rice via Lake Charles and thence by other carriers to Puerto Rico, not shown to be violative of section 16 or 18 of the Shipping Act, 1916, as alleged. *Lake Charles Board of Commissioners v. N. Y. & P. R. S. S. Co.*, 154 (157).

Rate on scrap iron from New York, N. Y., to Buenos Aires, Argentina, not shown to be unjustly prejudicial to exporter from United States as compared with foreign competitors. *R. A. Ascher & Co. v. Int. Freightng Corp.*, 213 (216).

The record shows no undue or unreasonable prejudice or disadvantage to complainant or unjust discrimination of the Shipping Act on its shipment of goatskins to Italy. *Edmond Weil, Inc. v. Italian Line*, 395 (398).

The Virgin Islands Company contends that the maintenance of a lower rate from Puerto Rico than from Virgin Islands is unduly prejudicial to it and other shippers. However, the only carriers transporting sugar from Virgin Islands do not operate in the Puerto Rican trade, and there is no evidence that they control the rates from Puerto Rico. *Sugar From Virgin Islands*, 695 (699).

Rate on wheat, in bulk, in lots of 500 tons or more from Pacific ports to Gulf ports not shown to be violative of section 16 or 18 of the Shipping Act, 1916. *New Orleans Board of Trade v. Luckenbach S. S. Co.*, 346 (348).

Rates on wool, mohair, camel hair, and alpaca hair between Boston, Mass., and New York, N. Y., found unjust and unreasonable for the future, but not in the past, and not unduly preferential or unduly prejudicial. *Boston Wool Trade Assoc. v. Eastern S. S. Lines*, 36 (39).

PREJUDICE—Continued.

Rates; Commodities; Service—Continued.

Rates on wool and related articles and local carload rates on all commodities between Boston, Mass., and Philadelphia, Pa., found not unduly prejudicial. *Boston Wool Trade Assoc. v. M. & M. T.*, 24 (30).

Undue prejudice is not shown when the carriers serving the alleged preferred point do not serve or participate in routes from the alleged prejudiced point. *Calif. Pkg. Corp. v. States S. S. Co.*, 546 (547).

The duty which the law places upon every common carrier to serve all members of the public upon equal terms has been evaded by many carriers subject to the Department's jurisdiction. *Seas Shipping Co. v. American South African Line*, 568 (580).

PREPAYMENT OF CHARGES.

It was respondent's fundamental right to demand and receive payment of freight charges as a condition precedent to transportation. *American Tobacco Co. v. C. G. T.*, 53 (55).

PROFIT TO SHIPPERS. *See also* REASONABLENESS.

While the testimony of witnesses concerning their probable net profits under increased rates is admittedly of value, the effect upon the shipper's business is not conclusive as to the reasonableness of rates. *Alaska Rate Investigation*, 1, (7).

Reasonableness of rates is not to be gauged by the ability or inability of shippers to market their products with profit. *Atlas Waste Mfg. Co. v. N. Y. & P. R. S. S. Co.*, 195 (196).

Complainant bears transportation charges, and all of its coffee is sold on a delivered basis. Certain competitors maintain coffee roasting and packing plants on the Pacific coast. Wholesale prices of the leading brands are the same, and complainant shows that subsequent to the increase in the westbound rate of approximately 3.7 cents on each case, the selling price of its coffee was reduced 12 cents a case, which reduction complainant described as "a competitive price feature" uninfluenced by the level of the intercoastal rate. Since the westbound rate was increased, complainant has absorbed the increase, asserting that it is not possible to pass the 21-cent difference in freight rates on to the buyer. Commercial and economic conditions of this character, however, cannot be made the basis of a finding that carriers' rates are unlawful. *Calif. Pkg. Corp. v. American-Hawaiian S. S. Co.* 543 (545).

The Commission's only duty with respect to the rates in issue is to inquire whether they are in accordance with the provisions of the Shipping Act, 1916, and related acts. It cannot require of carriers the establishment of rates which assure to a shipper the profitable conduct of his business. The carrier may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it; nor, conversely, can the shipper demand that an unreasonably low charge shall be accorded him because the profits of his business have shrunk to a point where they are no longer sufficient. *Eastbound Intercoastal Lumber*, 608 (623).

The effect of a rate upon commercial conditions, whether an industry can exist under particular rates, are matters of consequence, and facts tending to show these circumstances and conditions are always pertinent. But they are only a single factor in determining the fundamental question. A narrowing market, increased cost of production, overproduction, and many other considerations may render an industry unprofitable, without

PROFIT TO SHIPPERS—Continued.

showing the freight rate to be unreasonable. *Eastbound Intercoastal Lumber*, 608 (623).

While complainant may encounter economic and geographical disadvantages in selling its products in the East, the law does not contemplate the equalization of natural advantages and disadvantages through an adjustment of freight rates. *Paraffine Companies v. American-Hawaiian SS. Co.*, 628 (629).

To be reasonable the rule should, as far as possible, meet the commercial necessities of the shipper as well as recognize the operating problems of the carrier, but neither should be controlling. *Intercoastal Lumber Rate Changes*, 656 (659).

PROMOTIONAL RATES. See DEVELOPMENT RATES.**PROPORTIONAL RATES.**

If the instant increases should be denied, the carriers would be confronted with the unnatural and objectionable situation of having port-to-port rates which would be lower than their proportional water rates between the same ports on traffic handled in connection with rail lines. *Increased Rates, 1920*, 13 (17).

While recognition is given to the fact that the cost of handling local traffic is generally greater than the cost of handling through traffic and due weight is accorded statements that the proportional rates are maintained for competitive reasons and do not afford a profit over and above the cost of service rendered, they fall short of furnishing a satisfactory explanation of the great excess of the local over the proportional rates. Further, in regard to statements that the proportional rates on wool are not remunerative, it should be observed that the disparity between such rates and those alleged to be unreasonable strongly indicates that unduly high rates are exacted for the transportation of local traffic for the benefit of through interstate traffic. *Boston Wool Trade Assoc. v. Eastern SS. Lines*, 36 (38-39).

While recognizing that comparison of local port-to-port rate with water component of through rail-and-water rate is of some value, yet it is also recognized that, standing alone, a difference between such rates cannot be considered as determinative of lawfulness or unlawfulness of local rate. Manifestly, widely dissimilar conditions enter into establishment and maintenance of these two classes of rates. *Continental Roofing & Mfg. Co. v. B. & C. SS. Co.*, 74 (76-77).

Proportional of 41 cents as compared with 55-cent port-to-port rate and in connection with other factors has bearing upon the reasonableness of latter rate, considering that the services rendered in regard to both are necessarily similar in many respects. *Continental Roofing & Mfg. Co. v. B. & C. SS. Co.*, 114 (118).

The fact that the tariff rules of the Department specifically permit the publication of proportional rates supports respondent's view that the publication of such rates is permissible. But this in no way relieves respondent from the mandate of the law that its rates for transportation must not be violative of the Shipping Acts. *Proportional Westbound Intercoastal Rates on Cast Iron Pipe*, 376 (378).

PROPOSED REPORTS.

After hearing and subsequent to service of tentative report, dismissal without prejudice is precluded by the provision of section 24 requiring

PROPOSED REPORTS—Continued.

entry of report stating conclusions, decision, and order in every investigation in which a hearing has been held. *New Orleans Assoc. of Commerce v. Bank Line*, 177 (186).

Exceptions to examiner's proposed report were received by the Department seven days after time for filing exceptions provided for by Rules of Procedure. Accordingly rejected. *Gulf Intercoastal Rates To and From San Diego* (No. 2), 600, (600).

Complainants' exceptions to examiners proposed report on further hearing not seasonably filed and rejected. *Ames Harris Neville Co. v. American-Hawaiian SS. Co.*, 765 (765).

RAIL AND RAIL-WATER RATES.

There is such a manifest difference between transportation via rail and via water that rail rates cannot be regarded as a proper criterion or measure of water rates. *Wool Rates From Boston to Philadelphia*, 20 (21); *Boston Wool Trade Assoc. v. M. & M. T.*, 24 (29).

The conditions compelling absorption by respondent of terminal charges at Boston and Philadelphia in connection with through rail-and-water traffic do not apply with equal force to its local traffic. *Boston Wool Trade Assoc. v. M. & M. T.*, 24 (30).

The equalization of rail-and-water rates from central freight association territory to foreign destinations through various ports is manifestly a matter beyond the scope of the Board's jurisdiction. *Port Utilities Commission of Charleston v. Carolina Co.*, 61 (71).

That rail rates are not to be regarded as a criterion or measure of water rates has been affirmed. *American Peanut Corp. v. M. & M. T.*, 78 (84).

There is a tendency for complainants in regulatory proceedings before the Board to so rely upon decisions of the Interstate Commerce Commission as to give too little consideration to the fundamental differences between transportation by rail and transportation by water. The unit of transportation by rail is a car with a capacity of a relatively few thousand pounds. The unit of transportation by water is a ship, and the ships involved have an average cargo capacity of around 7,500 tons. The comparative ease with which a railroad by dropping or adding cars can adjust its operations to slight fluctuations in tonnage moving is obvious. Moreover, railroads are semimonopolistic in character and in any given competitive field relatively few in number while operators of vessels in foreign commerce of the United States may at any time and without warning be subjected to most severe competition by tramp vessels of any nation or by vessels chartered by shippers with large quantities of cargo to be transported. The exigencies of ocean transportation are many and largely peculiar unto such transportation. They cannot be neglected by the steamship operator if he is to survive, nor can the Board in arriving at its decisions fail to consider them. *Atlantic Refining Co. v. Ellerman & Bucknall SS. Co.*, 242 (253).

The joint rail-and-ocean rates and rail-barge-ocean rates are not under the control of the Department. *Intercoastal Investigation, 1935*, 400 (456).

Port-to-port rates of lines subject to the Panama Canal Act, port-to-port rates used in combination with rates of rail carriers for application on shipments moving over through rail-and-water routes, and joint rail-and-water rates are not subject to the jurisdiction of this Commission. The Interstate Commerce Commission has prescribed rates of the types de-

RAIL AND RAIL-WATER RATES—Continued.

scribed above, and respondents' position is that, since none of the proposed rates exceeds such prescribed rates or rates related thereto, the proposed rates before this Commission do not exceed maximum reasonable rates. While this argument may be persuasive, it is not controlling. *Commodity Rates Between Atlantic and Gulf Ports*, 642 (644).

The Commission has no jurisdiction over the rail-and-water rates. *Id.* (645). In rail transportation, the date a car is delivered for transportation determines the rate to be charged. Since delays in securing equipment for rail carriage are negligible as compared with those encountered in water transportation, there is no necessity for an effective-date rule in connection with rail rates. *Intercoastal Lumber Rate Changes*, 656 (659).

RATE COMPARISONS. *See* REASONABLENESS; PREJUDICE; UNIFORMITY OF RATES; VALUE OF COMMODITY.

RATE DEFINED. *See also* CHARGES DEFINED.

A rate is a carrier's compensation for the performance of a transportation service. *Intercoastal Rate Investigation*, 108 (111).

A rate is the net amount the carrier receives from the shipper and retains. *Intercoastal Investigation, 1935*, 400 (431).

RATE DIFFERENTIALS. *See* DIFFERENTIALS.

RATES PRESCRIBED BY INTERSTATE COMMERCE COMMISSION.

The Interstate Commerce Commission has prescribed rates of the types described, and respondents' position is that, since none of the proposed rates exceeds such prescribed rates or rates related thereto, the proposed rates before this Commission do not exceed maximum reasonable rates. While this argument may be persuasive, it is not controlling. *Commodity Rates Between Atlantic and Gulf Ports*, 642 (644).

RATE STRUCTURE.

In the great public interest, it would seem obvious that rate structures should be so made as to permit the flow of traffic to pass through as many ports as the economies of transportation and distribution will allow. *Port Utilities Commission of Charleston v. Carolina Co.*, 61 (71).

The record makes clear that the conference rates on file are the offspring of provisional compromises forced by carrier competition. They do not adjust to any other system of rate making. The rates of Shepard and Calmar were made with relation to the conference rates and are equally defective. *Intercoastal Investigation, 1935*, 400 (411).

The handicap list, which only appears from a study of individual items in Agent Thackara's tariff SB-I No. 4, embraces commodities as to which, after several months of trading and by way of compromise, it was agreed the "B" lines would charge 2.5 cents per 100 pounds less than the "A" lines. Such understanding and the further understanding that the "A" lines would not operate south of Philadelphia, Pa., are said to have effected a fairly even distribution of cargo volume between the two classes of lines. In arriving at such understandings, no consideration whatsoever was given to the rights of shippers or ports. For instance, shippers of commodities in the handicap list have alternative rates while this privilege is denied shippers of related or analogous commodities not in the list; ports south of Philadelphia and shippers from such ports are denied "A" line services and alternative rates on commodities named in the list; and on eastbound transportation the same rate is charged from all ports on the Pacific coast on commodities named in the list regardless of the line performing the service. *Id.* (412).

RATE STRUCTURE—Continued.

In the making of the tariffs, consideration should be given, among other things, to the cost of service, rights of shippers, and transportation and traffic conditions. *Id.* (463).

The practices condemned in the report as unfair not only prevent the maintenance of a reasonable and stable rate structure, vital to the welfare of American shippers and American-flag carriers, but they also open the door to violations of the regulatory provisions of the Shipping Act. Section 19 Investigation, 1935, 470 (500).

Neither the Commission nor any of its predecessors has prescribed or approved a general maximum rate structure for application between Gulf and North Atlantic ports. Present rates have been established voluntarily, apparently on the basis dictated by competitive conditions and with little regard to the establishment of a scientific rate structure. *Commodity Rates Between Atlantic and Gulf Ports*, 642 (644).

REASONABLENESS. *See also* PREJUDICE; DISCRIMINATION; FAIR RETURN; PROFIT TO SHIPPERS; DIVISIONS OF RATES; PERCENTAGE OF INCREASE IN RATES; SIMILARITY OF TRAFFIC, ETC.; UNIFORMITY OF RATES, ETC.; TARIFFS; NON-COMPENSATORY RATES.

In General:

The fundamental obligation of carriers under the Shipping Act is to charge only such rates as are just and reasonable. *Alaska Rate Investigation*, 1 (4).

As section 18 relates to carriers in interstate commerce exclusively, its requirements have no application for (foreign) respondents. *Boston Wool Trade Assoc. v. General SS. Corp.*, 49 (51).

Section 18 applies to interstate rates, charges, and practices of common carriers by water as distinguished from rates, charges, and practices in connection with the transportation of freight from ports in the United States to ports in foreign countries. *Port Util. Com. of Charleston v. Carolina Co.*, 61 (65).

As section 18 of the statute concerns carriers engaged in interstate commerce exclusively, its inhibitions regarding unjust and unreasonable rates and charges have no application to carriers engaged in through transportation from foreign countries to destinations in the United States, notwithstanding part of the through transportation was between ports in the United States. *Boston W. T. Assoc. v. Oceanic SS. Corp.*, 86 (87).

Section 18 has application to carriers in interstate commerce only. *W. T. Rawleigh Co. v. Stoomvaart*, 285 (286).

Where the issue as to the justness and reasonableness of rates attacked is pitched upon a comparison of such rates with the rates on another commodity, the complainant to prevail must establish that the rates on such other commodity are themselves reasonable and fair. *York County Cigar Mfgs. Assoc. v. Am. Haw. SS. Co.*, 209 (210).

Section 18 of the Shipping Act imposes upon carriers the obligation of establishing and observing just and reasonable rates and tariffs. Although the acts which the Department administers do not define just and reasonable rates and tariffs, it is well established that a rate may be so low as to be unreasonable, and thus unlawful. The proposed tariffs do not meet the requirements imposed by the statutes and are unlawful. *Intercoastal Rates of Nelson SS. Co.*, 326 (336-337).

REASONABLENESS—Continued.

In General—Continued.

The complaint alleges a violation of section 18 of the Shipping Act, but that section does not cover foreign commerce. *Edmond Weil v. Italian Line*, 395 (398).

Ordinarily, the voluntary establishment of a rate raises presumption of its reasonableness, but such inference does not necessarily follow when there is no movement under such rate. *Gulf W.B. Intercoastal Soya Bean Oil Meal Rates*, 554 (560).

Respondents are entitled under the law to a maximum reasonable rate, or one that is not so high as to be excessive or extortionate and not so low as to yield less than the cost of service plus a fair profit. *Eastbound Intercoastal Lumber*, 638 (620).

When rates or charges are increased for a short period and then voluntarily reduced, there is established a prima facie presumption that the increased rate or charge was unreasonable to the extent that it exceeded the subsequently established rate. *H. Kramer & Co. v. Inland Waterways Corp.*, 630 (632). Whatever the cause of the delay in making the reduction, it does not relieve defendants from their obligation under section 18 to establish, observe, and enforce just and reasonable charges. *Id.* (633).

Rate voluntarily established and maintained for a period of time exceeding two years was prima facie reasonable, and a 56-percent increase therein must be justified. *Sugar from Virgin Islands*, 695 (697).

The voluntary reduction of a rate without other supporting facts and circumstances does not warrant the inference that the rate prior to the reduction was unreasonable; but complainant did not rely solely upon such reduction. *Ann. Norit Co. v. Agwilines*, 741 (743).

Section 18 contemplates that tariffs filed pursuant thereto shall serve as information to shippers and others interested regarding available all-water routes between interstate ports as well as rates or charges for or in connection with transportation over such routes. *Sugar from Virgin Islands*, 695 (700).

Rates; Factors; Commodities; Suspension; Service:

The bulk of a commodity is one of the principal factors for consideration in constructing a rate for transportation by water, and great weight should be attached to this factor in a determination of the reasonableness or unreasonableness of such a rate. It is manifest, however, that additional factors, such as value, revenue, and others, are to be considered, which may negative the presumption of reasonableness arising from a calculation based upon the element of bulk alone. *Boston W. T. Assoc. v. M. & M. T.*, 24 (26).

Manifestly, the element of bulk as between two classes of peanuts is entitled to consideration. *Ann. Peanut Corp. v. M. & M. T.*, 78 (83).

Space is an important factor which carriers by water may properly take into consideration in fixing their rates. *Isaac S. Heller v. Eastern*, 158 (160).

Rates found to be unjust and unreasonable for the future, but not in the past. The period during which the assailed rates were applicable was one of rapidly changing values and costs and of varying commercial and transportation conditions. *Boston Wool Trade Assoc. v. M. & M. T.*, 24 (30).

REASONABLENESS—Continued.

Rates; Factors; Commodities; Suspension; Service—Continued.

- The mere fact that the rate in the reverse direction is substantially lower does not justify a finding that the rate under attack is unreasonable or in any other way detrimental to our commerce. *Edmond Weil v. Italian Line*, 395 (399).
- Rates on automobiles accompanied by passengers from New York, N. Y., to Portland, Maine, and from Boston, Mass., to New York, N. Y., not shown to be unjust or unreasonable. *Isaac S. Heller v. Eastern*, 158 (160).
- Rate on brass ingots from Chicago to Los Angeles Harbor found applicable but unjust and unreasonable. *H. Kramer v. Inland Waterways Corp.*, 630 (633).
- Canned goods include goods in glass containers. *Gelfand v. Bull*, 169 (170).
- Rates on activated carbon from Jacksonville to New York found unreasonable. *Ann. Norit Co. v. Agwilines*, 741 (743).
- Rate on ground roasted coffee from Brooklyn to Pacific coast ports not shown to be unreasonable or unduly prejudicial. *Calif. Pkg. Corp. v. Am. Haw.*, 543 (545).
- Rates on cotton waste from New York, N. Y., to San Juan and Aguadilla, P. R., not shown to be unjust and unreasonable. *Atlas Waste Mfg. Co. v. N. Y. & P. R. SS. Co.*, 195 (197).
- Rates on hardwood flooring from Mobile, Ala., to Tampa, Fla., not shown to be unjust or unreasonable. *Biltmore Flooring Co. v. Lake Giltedge SS. Co.*, 134 (137).
- Rates on furniture and carpet paper from Savannah, Ga., to Miami, Fla., not shown to have been unjust or unreasonable. *I. C. Helmly Furn. Co. v. M. & M. T.*, 132 (133).
- Rates on grapefruit and grapefruit juice from Jacksonville and Tampa, Fla., to Pacific coast ports not shown to be in violation of the Shipping Act, 1916. *California Pkg. Corp. v. States SS. Co.*, 546 (548).
- Rates on iron and steel rivets from Boston, Mass., to New York, N. Y., found unreasonable. *Judson L. Thomson Mfg. Co. v. Eastern SS. Lines*, 58 (59-60). Rates on leather from Montague, Muskegon, and Grand Haven, Mich., to Chicago, Ill., found unjust and unreasonable. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (106).
- Generically, the material involved is pyroxylin coated cotton cloth, but the fact that it is further processed to give the effect of leather removes it from the general classification and subjects it to the rate applicable on artificial or imitation leather. *Leather Supply Co. v. Luckenbach SS. Co.*, 779 (780).
- Rate on paper towels from New York, N. Y. to Cristobal, C. Z., not shown to be unjust or unreasonable. *Dobler & Mudge v. Panama R. R. SS. Line*, 130 (131).
- Rate on scrap paper from Atlantic ports to New Orleans not shown to be unlawful. *Celotex Corp. v. Mooremack Gulf Lines*, 789 (793).
- Rates on peanuts from Norfolk, Va., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., in certain instances, found unjust and unreasonable. *American Peanut Corp. v. M. & M. T.*, 78 (84).

REASONABLENESS—Continued.

Rates; Factors; Commodities; Suspension; Service—Continued.

Rate on iron pipe and elbows from New York, N. Y., to Miami, Fla., not shown to have been unjust or unreasonable. *Bonnell Elec. Mfg. Co. v. Pacific SS. Co.*, 143 (144):

Rate on roofing and building materials from Baltimore, Md., to Miami, Fla., found unjust and unreasonable prior, but not subsequent, to June 1, 1925. *Continental Roofing & Mfg. Co. v. B. & C. SS. Co.*, 114 (119).

Rates on Manila rope from the Philippine Islands to the United States not shown to be unreasonable or unduly prejudicial. *Johnson Pickett Rope Co. v. Dollar SS. Lines*, 585 (590).

A 56-percent increase in the rate on sugar has not been justified and the increased rate is unjust and unreasonable. *Sugar From Virgin Islands*, 695 (699).

Rate on raw sugar from the Virgin Islands to the United States found unjust and unreasonable, but not unduly preferential or prejudicial. *Id.* (700).

Rates on switch boxes with interior fittings from New York, N. Y., to Los Angeles and San Francisco, Calif., and Portland, Oreg., not shown to have been unjust or unreasonable. *Trumbull-Vanderpoel v. Luckenbach SS. Co.*, 126 (129).

Rate on wallboard from New Orleans to Atlantic ports found unreasonable. *Celotex Corp. v. Mooremack Gulf Lines*, 789 (792-793).

Rate on bulk wheat from Pacific ports to Atlantic and Gulf ports found not unduly and unreasonably prejudicial and preferential but unjust and unreasonable. Rate on sacked wheat from Pacific ports to Atlantic and Gulf ports not shown to be unlawful. Rules and regulations applicable to transportation of wheat from Pacific ports to Atlantic and Gulf ports not shown to be unlawful. *Tri-State Wheat Transp. Council v. Alameda Transp. Co.*, 784 (788).

Rates on pressed wood insulating board from Portland, Oreg., to Atlantic and Gulf ports of the United States not shown to be unreasonable or unduly prejudicial. *Dant & Russell v. American-Hawaiian SS. Co.*, 781 (783).

Rates, fares, and charges of carriers operating between Norfolk, Va., and Atlantic-coast ports north thereof, between Norfolk and New Orleans, La., between New Orleans and the Mexican border, between ports on the Great Lakes, between New York and the Canal Zone, between New York and the Virgin Islands, and between New York and Puerto Rico authorized to be increased. *Increased Rates*, 1920, 13 (18).

Schedules proposing reductions in rates between Atlantic and Pacific ports found not justified. *Intercoastal Rates of Nelson SS. Co.*, 326 (341).

Schedules proposing increases and reductions in westbound intercoastal rates, with certain exceptions, found justified. *Id.* (343).

Schedules proposing to cancel so-called terminal rates from Mount Vernon and Stanwood, Wash., to intercoastal destinations on the Atlantic coast found justified. *Intercoastal Rates From Mount Vernon*, 360 (363).

Schedules proposing joint rates for transportation of property between Berkeley or Emeryville, Calif., and points on the Atlantic coast with

REASONABLENESS—Continued.

Rates; Factors; Commodities; Suspension; Service—Continued.

- trans-shipment at San Francisco, Calif., found justified. Intercoastal Rates To and From Berkeley, 365 (368).
- Schedules proposing to make certain changes in the rates for through transportation between San Diego, Calif., and ports on the Gulf of Mexico found justified. Gulf Intercoastal Rates To and From San Diego, 516 (518).
- Schedules proposing to cancel through routes and joint rates for transportation of freight from Atlantic-coast ports to Vancouver, Wash., found justified. Westbound Intercoastal Rates to Vancouver, Wash., 770 (774).
- The Commission, acting under authority of section 18 of the Shipping Act, 1916, withheld approval of schedules proposing to increase rates on cotton, grain and grain products, paper bags, wrapping paper, pulp-board, wallboard, canned goods, binder twine, charcoal, bones and bone meal from United States ports on the Gulf of Mexico to North Atlantic ports of the United States and on scrap or waste paper from North Atlantic ports of the United States to United States ports on the Gulf of Mexico. Commodity Rates Between Atlantic and Gulf Ports, 642 (642).
- Schedule proposing reductions in eastbound intercoastal rates on oranges, lemons, and grapefruit not justified. Intercoastal Rates of Nelson SS. Co., 326 (345).
- Schedules proposing to reduce westbound intercoastal rate on dates, figs, and peel of citron, grapefruit, lemon or orange, found not justified. Westbound Intercoastal Rates on Dates, Etc., 352 (354).
- Schedules proposing to increase rates on lumber and products thereof from United States Pacific-coast ports to United States ports on the Gulf and Atlantic coast not shown to be unlawful. Eastbound Intercoastal Lumber, 608 (623).
- Proposed rates on commodities from United States ports on the Gulf of Mexico to North Atlantic ports of the United States and on scrap paper from North Atlantic ports of the United States to United States ports on the Gulf of Mexico found justified. Commodity Rates Between Atlantic and Gulf Ports, 642 (645).
- Schedules proposing proportional rates from Charleston, S. C., and Savannah, Ga., to Pacific coast ports on cast-iron soil and pressure pipe originating at Birmingham, Ala., and other designated inland points in the Birmingham District, not shown to violate any provision of the Shipping Act, 1916. Proportional Westbound Intercoastal Rates on Cast Iron Pipe, 376 (379).
- Schedules proposing to increase rates on old brass radiators from United States Pacific coast ports to United States Gulf and Atlantic coast ports found unreasonable. Old Brass Radiators—Eastbound, 670 (673).
- Schedule proposing to reduce rate for transportation from Baltimore to Alameda, Los Angeles Harbor, Oakland, and San Francisco, Portland, and Seattle and Tacoma, of silica sand, in bulk, in lots of not less than 500 net tons, for manufacture of glass and glassware, not justified. Intercoastal Rate on Silica Sand From Baltimore, Md., 373 (375).

REASONABLENESS—Continued.

Rates; Factors; Commodities; Suspension; Service—Continued.

Proposed schedules containing optional discharge provision on shipments of soap and soap products from Boston, Mass., to Pacific coast ports found not justified. *Intercoastal Rates of American-Hawaiian SS. Co.*, 349 (351).

Schedules proposing rate for transportation from New York Harbor to Pacific coast ports on soda ash and caustic soda, minimum weight 1,500 net tons, originating at Wyandotte, Mich., and moving as a unit by water to New York Harbor, found not justified. *Id.* (351)

Schedules proposing to increase the rate on soya bean oil meal from United States Gulf ports to United States Pacific coast ports found justified. *Gulf Westbound Intercoastal Soya Bean Oil Meal Rates*, 554 (561).

Proposed rate on binder twine from United States ports on the Gulf of Mexico to North Atlantic ports of the United States and proposed rate with respect to the effective date of rate changes on grain milled in transit have not been justified. *Commodity Rates Between Atlantic and Gulf Ports*, 642 (645).

Proposed advances in rates on wool and related articles from Boston, Mass., to Philadelphia, Pa., not shown to be reasonable and not justified. *Wool Rates From Boston to Philadelphia*, 20 (23).

No duty rested upon respondent under section 18 to protect direct-service rates shown in tariff as against higher joint rates via its line and Clyde Steamship Company. *I. C. Helmly Furniture Co. v. M. & M. T.*, 132 (133).

Rates and charges for intercoastal transportation from and to Sacramento, California, equal to those contemporaneously maintained for intercoastal transportation from and to terminals at Oakland, Alameda, and Richmond, Calif., not shown to be unreasonable, unduly preferential or prejudicial, or otherwise unlawful. *Intercoastal Investigation*, 1935, 400 (463).

Schedules proposing to cancel all rates for through intercoastal transportation of freight between San Diego and United States ports on the Gulf of Mexico, transhipped at Los Angeles Harbor, Calif., and to San Diego from points on the Mississippi River and other inland points transhipped at New Orleans and at Los Angeles, found not unlawful. *Gulf Intercoastal Rates To and From San Diego* (No. 2), 600 (605).

Schedules proposing to change by qualification existing schedules governing the application of through routes and joint rates provided therein for the transportation of freight from Atlantic to Pacific coast ports found not justified. *Intercoastal Joint Rates Via On-Carriers*, 760 (764).

Practices:

Practice of accepting only as less-than-carload traffic and applying less-than-carload rates to shipments of wool and related articles not shown to be unjust or unreasonable. *Boston Wool Trade Assoc. v. M. & M. T.*, 32 (35).

Method of measurement of cast-iron pipe or rate charged on shipments thereof from ports in continental United States to Manila, P. I., not shown to have been unreasonable. *U. S. Pipe & Foundry Co. v. Tampa Inter-Ocean SS. Co.*, 173 (176).

REASONABLENESS—Continued.

Practices—Continued.

Rates, regulations, and practices of common carriers by water engaged in the transportation of property between ports in the State of Washington and ports in Alaska not shown to be unreasonable Alaskan Rate Investigation, 1 (7, 12).

Rule that, except as otherwise provided in tariff, (1) rates named in tariff apply only on shipments from one shipper, forwarded on one ship, covered by one bill of lading, from one loading terminal at one loading port, consigned to one consignee at one discharging terminal at one discharging port; (2) not more than one arrival notice, one delivery order and one freight bill will be issued to cover each shipment; (3) each freight bill must be paid in full in a single payment by either shipper or consignee; (4) carriers will not act directly or indirectly as agents of shippers or consignees in the assembling or distribution of freight by signing separate receipts for parts of a single shipment when such separate receipts are in the name of more than one shipper or by any other means whatsoever, not shown to be unlawful. Intercoastal Segregation Rules, 725 (737).

Schedule proposing changes in intercoastal port-equalization rule found not justified. Intercoastal Rates of Nelson SS. Co., 326 (345).

The fact that carriers serving New York do not call at Boston does not justify requiring those carriers that do call at that port to make a higher charge. Commonwealth of Mass. v. Colombian SS. Co., 711 (716).

RECORD AS BASIS OF FINDINGS. *See also* HEARING.

Following hearings where all parties have had full opportunity of presenting all relevant facts, consideration must, as a matter of fairness and expediency, be restricted to testimony and exhibits produced of record by the parties at the hearing. Additional statements and figures contained in exceptions must, therefore, be excluded. Eastern Guide Trading Co. v. Cyprian Fabre, 188 (191).

The 37-cent rate on wallboard was increased after the hearing to 41 cents, or approximately 10 percent. Counsel for defendants stated at the argument that they were unwilling that the issue as to the lawfulness of the increased rate be considered upon this record. Therefore, the Commission's findings are based strictly upon the record as made, and no opinion is expressed as to the propriety of the 10-percent increase. Celotex Corp. v. Mooremack Gulf Lines, 789 (793).

RECORD IN OTHER PROCEEDINGS.

Record of testimony taken at hearing may be available for every appropriate use in any future related proceeding brought upon complaint or initiated by Board. Marginal Track Delivery, 234 (239).

REGULATIONS OF OTHER FEDERAL AGENCIES.

Manifestly, the Board, in administering the regulatory provisions of the Shipping Act applicable to carriers engaged in interstate commerce, is not bound by regulations promulgated by other Federal agencies having distinctly different functions to perform. Thames River Line, 217 (219).

REPARATION.

Denied. Boston Wool Trade Assoc. v. M. & M. T., 24 (31).

Complaint dismissed. Boston Wool Trade Assoc. v. M. & M. T., 32 (35).

Denied. Boston Wool Trade Assoc. v. Eastern SS. Lines, 36 (40).

REPARATION—Continued.

As was said in *Pennsylvania Railroad Co. v. International Coal Mining Co.*, 230 U. S. 184, which involved reparation under a practically identical statute: "The statute gives a right of action for damages to the injured party, and by the use of these legal terms clearly indicated that the damages recoverable were those known to the law and intended as compensation for the injury sustained. It is elementary that in a suit at law both the fact and the amount of damage must be proved. And although the plaintiff insists that in all cases like this the fact and amount of pecuniary loss is a matter of law, yet this contention is not sustained by the language of the act, nor is it well founded in actual experience." *Eden Mining v. Bluefields Fruit & SS. Co.*, 41 (47).

It cannot be inferred from the language used in section 22 that compensation for other than the actual damage incurred is to be granted. *Id.* (47).

While the fact of discrimination in violation of provisions of the Shipping Act may be proved and found accordingly, in respect to awarding reparation under section 22 of the act for injury alleged to have been caused by such discrimination, the fact of injury and the exact amount of pecuniary damage must be shown by further and other proof before relief may be extended. Proof of unlawful discrimination within the meaning of the act, by showing the charging of different rates from shippers receiving the same service, does not, as a matter of course, establish the fact of injury and the amount of damage to which the complainant may be entitled by way of reparation. *Id.* (47-48).

Complaint dismissed. *Id.* (48).

Carriers not shown to have agreed to absorb wharfage charge. However, there was an agreement to absorb insurance which was not carried out, and, up to the time of hearing, reimbursement for premiums paid by consignees had not been made. In the circumstances, if the amounts referred to have not been refunded, appropriate claim should be presented to carriers, who should thereupon adjust the matter promptly. *Boston Wool Trade Assoc. v. General SS. Corp.*, 49 (52).

Found due. *Judson L. Thomson Mfg. Co. v. Eastern SS. Lines*, 58 (60).

Found due. *American Tobacco Co. v. C. G. T.*, 97 (100).

Found due. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (107).

Found due. *Continental Roofing & Mfg. Co. v. B. & C. SS. Co.*, 114 (119).

Complaint dismissed. *Trumbull-Vanderpoel Elec. Mfg. Co. v. Luckenbach SS. Co.*, 126 (129).

Complaint dismissed. *I. C. Helmly Furn. Co. v. M. & M. T.*, 132 (133).

Complaint dismissed. *Biltmore Flooring Co. v. Lake Giltedge SS. Co.*, 134 (137).

Found due. *Muir-Smith Motor Co. v. G. L. T. C.*, 138 (142); *Russell S. Sherman v. G. L. T. C.*, 187 (187).

Complaint dismissed. *Bonnell Elec. Mfg. Co. v. Pacific SS. Co.*, 143 (144)

Complaint dismissed. *Issac S. Heller v. Eastern SS. Lines*, 158 (160).

Found due. *Gelfand Mfg. Co. v. Bull SS. Line*, 169 (172).

Found due. *Lee Roy Myers Co. v. M. & M. T.*, 192 (194).

Complaint dismissed. *R. A. Ascher & Co. v. International Freighting Corp.*, 213 (216).

Complaint dismissed. *Atlantic Refining Co. v. Ellerman & Bucknall SS. Co.*, 242, (256).

REPARATION—Continued.

Complaint dismissed. *Fir-Tex Ins. Board Co. v. Luckenbach SS. Co.*, 258 (261).

Complaint dismissed. *W. T. Rawleigh Co. v. Stoomvaart*, 285 (293).

The shipments were received at Duluth, Minn., on October 12, 19, and 24, 1923. The record does not disclose the dates charges on the respective shipments were paid. Parties, however, have stipulated that the date of receipt of each shipment was substantially a few days prior to the date charges on each such shipment were paid. By this stipulation respondent has admitted that the informal complaints were filed within the statutory period prescribed by section 22 of the Shipping Act, 1916. *Oakland Motor Car Co. v. G. L. T. C.*, 308 (309-310).

Hearing upon complaints filed with the Board discloses the assessment and collection of illegal charges, in violation of section 18 of the Shipping Act, 1916. Section 22 of that Act authorizes an award of reparation to the party injured. Martin Rosendahl was injured the moment he paid the charges and was the person directly damaged by the collection in 1923 of the illegal rates. His claim accrued at once, and the law administered by the Department does not inquire into later events. *Id.* (310-311).

Respondent contends that, inasmuch as it has not been proved that complainant bore the charges on the shipments involved, an award of reparation is not in order. A showing of payment of the charges by complainant is sufficient. *Id.* (311).

The record does not show the exact dates the charges on the respective shipments were paid, and it appears parties are unable to definitely determine such dates. In view of the stipulation entered into that shipments were received a few days prior to the date charges on each shipment were paid, it is found that interest shall be computed from the first of the month next succeeding the date the shipments were received. *Id.* (312).

It is found that complaints sufficiently verified to warrant recognition as "sworn complaints" within the purposes of the statute were filed within the statutory period and that the claims presented therein are properly before the Department for action. *Id.* (312).

Found due. *Id.* (312).

Complaint dismissed. *Edmond Weil v. Italian Line*, 395 (399).

Complaint dismissed. *California Pkg. Corp. v. American-Hawaiian SS. Co.*, 543 (545).

Inasmuch as there is no evidence that the Shipping Act has been violated, no grounds exist upon which to base an award of reparation. *Seas Shipping Co. v. South African Line*, 568 (579).

Complaint dismissed. *Id.* (584).

Complaint dismissed. *Johnson Pickett Rope Co. v. Dollar SS. Lines*, 585 (590).

Complaint dismissed. *Mac'n Cooperage Co. v. Arrow Line*, 591 (595).

Defendant denies that the rate charged was unreasonable or otherwise unlawful but is willing to pay the reparation sought on the theory that complainant was forced to pay the high rate through no fault of his own. The Commission has no authority under the law to award reparation except upon a showing of violation of the Shipping Acts. *C. W. Spence v. Pacific-Atlantic SS. Co.*, 624 (627).

Complaint dismissed. *Id.* (627).

REPARATION—Continued.

Proof of a violation of section 16 of the Shipping Act, 1916, supported by proof of damage resulting directly therefrom is a prerequisite to an award of reparation. *H. Kramer & Co. v. Inland Waterways Corp.*, 630 (633).

Found due. *Id.* (633).

Complainant fails to establish the extent of its injury. An order will be entered assigning the case for further hearing solely with respect to the measure of complainant's injury. *Hernandez v. Bernstein*, 686 (691).

A reparation basis is not to be found in the expectation or promise that a reduced rate would be established or in the carriers' subsequent voluntary reduction of a rate, and a mere reduction raises no presumption that the former rate was unreasonable. While a voluntary reduction does not preclude an award of reparation if the prior rate was unreasonable, this has not been shown. *Bloomer Bros. Co. v. Luckenbach SS. Co.*, 692 (693).

Found due. *American Norit Co. v. Agwilines*, 741 (743).

Complaint dismissed. *Leather Supply Co. v. Luckenbach SS. Co.*, 779 (780).

The right of a governmental body to waive its rules and regulations differs materially from the right to waive provisions of an act conferring upon it jurisdiction of the subject matter. This distinction is clearly outlined by the court when it says: "The line of division must be kept a sharp one between the function of a statute requiring the presentation of a claim within a given period of time, and the function of a regulation making provision as to form. The function of the statute, like that of limitations generally, is to give protection against stale demands. The function of the regulation is to facilitate research." This holding was reaffirmed in *U. S. v. Garbutt Oil Co.*, 302 U. S., 528. *Reliance Motor Car Co. v. G. L. T. C.*, 794 (795).

Section 22 clearly requires that a complaint be sworn to when filed, and the Commission has no power to waive this requirement. *Reliance Motor Car Co. v. G. L. T. C.*, 794 (796).

Section 22 of the Shipping Act, 1916, as amended, requires that complaints be sworn to when filed, which filing must occur within two years from the time the cause of action accrues in order to enter an award of reparation. Reparation on claims not meeting these requirements is barred, and with respect to such claims, the complaint is dismissed for lack of jurisdiction. *Id.* 797).

RESHIPMENT. *See also* THROUGH ROUTES AND THROUGH RATES.

As illustrated by the consignment of annato seed, the contract of carriage was completed at New York, and any further carriage of complainant's shipments involved a new and independent transportation transaction. The advantages complainant seeks are manifestly not in any respect demandable of respondents as a matter of right. It follows that respondents' refusal to rebill and apply lower through rates on the re-shipped cargo concerned cannot be considered to deprive complainant of any right or privilege to which it is entitled. Moreover, the issuance by respondents of through bills and according through rates for the two local transportation movements concerned in this proceeding is prohibited by section 16 of the Shipping Act, which makes unlawful the furnishing by subject carriers of transportation at less than their

RESHIPMENT—Continued.

regular rates through false billing or by other unfair device or means. *Pablo Calvet & Co. v. Baltimore Insular Line*, 369 (371).

RISK.

Wool is shipped in uniform bags or bales, requires no special equipment and only a minimum amount of attention in handling, and is readily adaptable for stowage with other shipments. These facts are indicative of its greater desirability as traffic from the standpoint of liability assumed by the carrier for loss or damage. *Boston Wool Trade Assoc. v. M. & M. T.*, 24 (29).

Data indicating that the amount paid in settlement of claims for loss and damage to shipments of wool exceeded that paid with respect to claims for loss and damage to shipments of boots and shoes and cotton piece goods must be viewed in the light of the vastly greater volume of wool handled. *Id.* (29).

RIVER CARRIERS. See **INTERCOASTAL SHIPPING ACT, 1933.**

ROUTING.

Carriers not shown to have been obligated to forward via rail from port of transshipment shipments covered by bills of lading which did not specifically provide for rail routing. *Boston Wool Trade Assoc. v. General SS. Corp.*, 49, (50-51).

Manifestly, the rule that a shipper is required to pay only the rate chargeable via the route which his goods are transported is predicated upon the existence of alternative routes with differences in through rates. *Id.* (51).

SEAL OF NOTARY PUBLIC.

If the absence of the seal is fatal, complainant's claims are barred, and the carrier will be permitted to retain the amount of the overcharge collected, to which it is not justly entitled. Under the circumstances of these cases, such a ruling would result in a miscarriage of justice and is believed to be unwarranted. *Oakland Motor Car Co. v. G. L. T. C.*, 308 (311).

SEGREGATION CHARGES. See **ABSORPTIONS.**

SERVICE. See also **CONTRACTS WITH SHIPPERS; MERCHANT MARINE ACTS; DISCONTINUANCE OF SERVICE; STABILITY OF RATES AND SERVICES; ABSORPTIONS.**

Expedition service is an element of weight bearing upon value of service. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (105).

The carrier's undertaking is not only to transport but also to deliver cargo to consignees because transportation, as the United States Supreme Court has said, is not completed until the shipment arrives at the point of destination and is there delivered. *Assembling and Distributing Charge*, 380 (384).

It is not within the power of the carriers by agreement in any form to burden shippers with charges for services that they are bound to render without any other compensation than the customary charges for transportation. *Id.* (385).

A difference in the price of intercoastal transportation attracts traffic to the line naming the lowest rate. This would be accomplished by the suggestions that rates be graduated according to frequency of sailing and time in transit. Such thing in effect would be placing a premium on infrequent and slow service and a penalty on the line that would give the service contemplated by law. The incentive for investment in a line that would give a modern, efficient, and economical service would be little, if any, and the result would be calamitous. Furthermore, restrictions as to time in transit from last point of loading to first port of discharge utterly ignore the rights of shippers and receivers of goods located elsewhere. *Intercoastal Investigation, 1935*, 400 (428-429).

SERVICE—Continued

Some weight must be given to the resultant benefits to the shipping public arising from a more frequent and regular service. *Atl. Ref. Co. v. Ellerman & B. S. S. Co.*, 242 (254).

The need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920. Section 19 Investigation, 1935, 470 (497).

SHALLOW-WATER POINTS.

The act makes no distinction whatsoever between points on deep water and points on shallow water. *Intercoastal Rates To and From Berkeley*, 365 (367).

It is the duty of carriers to establish rates between points that they serve. For this purpose, the law does not distinguish points on shallow water from points on deep water, and the amount of the rate can not be measured by the depth of the water. *Intercoastal Investigation*, 1935, 400 (444).

The law draws no distinction between shallow-water points and deep-water points. *Id.* (445).

SHIPPING ACT, 1916. *See also* HIGH SEAS; ILLEGAL RATES; INTERCOASTAL SHIPPING ACT, 1933; MERCHANT MARINE ACTS; NATIONALITY OF CARRIER; PHILIPPINE ISLANDS.

Interpretation; Jurisdiction:

Carriers, for traffic and business reasons, may do many things which they can not legally be compelled to do. *Port Util. Com. of Charleston v. Carolina Co.*, 61 (71); *Atl. Ref. Co. v. Ellerman & B. S. S. Co.*, 242 (255).

The Board has no power to compel carriers operating out of Canada to quote in sterling, and it is at least questionable whether the Board could compel carriers operating out of the United States to quote rates in the currency of any other country than the United States. *Rates in Canadian Currency*, 264 (278).

It is recognized as a general rule that remedial and procedural statutes are to be construed liberally with a view to the effective administration of justice. *Oakland Motor Car Co. v. G. L. T. C.*, 308 (311-312).

There is clearly much need for stability in rates and shipping conditions in our foreign trade and for more adequate machinery to aid in enforcing the various regulatory provisions of the 1916 act. Section 19 Investigation, 1935, 470 (502).

At the original hearing, allegations of unlawfulness were made with respect to agreements filed by defendants and approved by the Board. Since the complaint contained no reference to the agreements, the Board held that issue was not properly before it for determination. *Atl. Ref. Co. v. Ellerman & B. S. S. Co.*, 531 (532).

The Shipping Act recognizes that a carrier may reduce rates below a fair and remunerative basis with the intent of driving a competitive carrier by water out of business without such action constituting the operation of a fighting ship. This is apparent when the fighting-ship prohibition in section 14 is compared with section 19 of that act. The fighting-ship prohibition does not condemn rate reductions per se, but makes it unlawful to use a vessel in any particular trade, whether in interstate or foreign commerce, "for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade," whereas section 19 provides that, if any common carrier by water in interstate commerce reduces its rates "below a fair and remunerative basis, with the intent of driving out or otherwise injur-

SHIPPING ACT, 1916—Continued.

Interpretation; Jurisdiction—Continued.

ing a competitive carrier by water," the carrier cannot increase its rates unless after hearing the Department finds that such proposed increase "rests upon changed conditions other than the elimination of said competition." Broadly speaking, the Department's powers over carriers in interstate commerce are considerably greater than those over carriers in foreign commerce; yet, under section 19, any common carrier by water in interstate commerce which reduces its rates "below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water" is merely forbidden to increase such rate unless after hearing the Department finds that such proposed increase "rests upon changed conditions other than the elimination of said competition." Section 14 makes no distinction between fighting ships in interstate commerce and fighting ships in foreign commerce, and the broad interpretation of the term "fighting ship," which complainant seeks is not compatible with the provisions of section 19 just quoted. *Seas Shipping Co. v. American South African Line*, 568 (579).

Inasmuch as no violation of section 14 has been shown and because of the fact that the commerce involved is not "between foreign ports," the provisions of section 14a of the Shipping Act, 1916, are not applicable. *Id.* (579).

However disastrous to all concerned a rate war in our foreign commerce may prove, the Congress has not given the Department the power to terminate it. *Id.* (584).

Any movement between points within the same State is not subject to the Department's jurisdiction unless it constitutes part of a through-route movement in interstate or foreign commerce. *Gulf Intercoastal Rates To and From San Diego (No. 2)*, 600 (605).

The Commission's jurisdiction extends only to local port-to-port transportation. *Commodity Rates Between Atlantic and Gulf Ports*, 642 (645).

Upon brief, the canal respondents question the Commission's jurisdiction under any circumstances to order cancellation of the suspended schedules involved in the proceeding. Their argument in this relation refers to the absence of any provision in the Shipping Act, 1916, as amended, similar to paragraph 18 of section 1 of the Interstate Commerce Act. Notwithstanding such absence, pertinent provisions of the Shipping Act to which respondents are amenable are absolute. For example, section 16 of 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 the Commission's duty, under the act, to order its removal. *Westbound Intercoastal Rates to Vancouver, Wash.*, 770 (773-774).

It is necessary for an administrative body to comply strictly with an act of Congress delegating to it jurisdiction over any given field. As a general rule, when jurisdiction is conferred by statute, every act necessary to such jurisdiction must affirmatively appear. If the statute is not complied with, jurisdiction does not exist. If one of the mandates of the statute is that complaints brought under it be

SHIPPING ACT, 1916—Continued.

Interpretation; Jurisdiction—Continued.

sworn to when filed, one that is not so sworn to is not such a complaint as the statute requires and is not, therefore, sufficient to give to the Commission jurisdiction of the subject matter. Section 22 clearly requires that a complaint be sworn to when filed, and the Commission has no power to waive this requirement. Complaint dismissed. *Reliance Motor Car Co. v. G. L. T. C.*, 794 (796).

Parties Subject; Requirements. *See also* BROKERS AND BROKERAGE; CONTRACT CARRIERS; FORWARDERS AND FORWARDING; TERMINAL FACILITIES; TRAMPS.

Regulatory provisions of the act apply to Baltimore-New York steamship Co., a common carrier by water engaged in the transportation of property between Baltimore and New York. *Baltimore-New York SS. Co.*, 222 (223).

Regulatory provisions of the act apply to Bayside Steamship Co., a common carrier by water engaged in the transportation of property between Los Angeles Harbor and San Francisco on the one hand, and Puget Sound ports on the other. *Bayside SS. Co.*, 224 (225).

Regulatory provisions of the act apply to North Pacific Steamship Line, a common carrier by water engaged in the transportation of property from San Francisco to Aberdeen and Hoquiam, Wash. *North Pacific SS. Line*, 227 (229).

Regulatory provisions of the act applied to Coast Steamship Co., engaged in transportation between San Francisco and Portland, Oreg., and Coos Bay. *Coast SS Co.*, 230 (231).

There is nothing in the law or elsewhere that would prevent carrier at present from operating fourteen vessels and thereby maintain more frequent sailings. *Intercoastal Rates of Nelson SS. Co.*, 326 (334-335).

The right to initiate rates inhere in the carriers. Such rates may be changed by them unless in doing so they violate the law. *Intercoastal Rates From Mount Vernon*, 360 (362).

There is no requirement in the Shipping Act that rates and practices of carriers engaged in any particular trade shall be those which carriers in another trade must observe, and therefore, the fact that respondent observes a practice respecting returned cargo different from that of carriers in other trades in and of itself does not establish a violation of the Shipping Act. *Edmond Weil v. Italian Line*, 395 (396).

Persons engaged in the business of furnishing wharfage, docks, warehouse or other terminal facilities in connection with a common carrier by water are subject to the Shipping Act, 1916. Section 16 thereof makes it unlawful for any such person to subject any particular person, which term includes a common carrier by water in intercoastal commerce, or any particular locality, or description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 17 of that act imposes upon such persons the obligation of observing just and reasonable practices relating to or connected with the receiving, handling, storing, or delivering of property. *Intercoastal Investigation, 1935*, 400 (436).

It is the right of shippers to ship in any quantity they choose and the obligation of carriers to carry the quantity tendered to them, due

SHIPPING ACT, 1916—Continued.

Parties Subject; Requirements—Continued.

regard being had for the proper loading of the vessel and the available tonnage. *Id.* (454-455).

The act does not require operators of piers and wharves to file their rates and schedules with the Commission, nor is there any statutory requirement governing the time of notice of their changes. *Philadelphia Ocean Traffic Bureau v. Philadelphia Piers*, 701 (702).

Defendants, to the extent they own or operate wharves and piers in connection with interstate or foreign water-borne commerce wholly exclusive of rail transportation, are "other persons" subject to the act as defined in section 1 thereof. *Id.* (702).

Defendant Southern Railway Company contends that its terminal facilities are subject solely to the jurisdiction of the Interstate Commerce Commission. Section 1, paragraph 3, of the Interstate Commerce Act defines the term "railroad" to include, among other things, all terminals and terminal facilities of every kind used or necessary in the transportation of property designated in such act. Defendant urges that section 33 of the Shipping Act, 1916, which prohibits construction of any provision of the Shipping Act to affect the power or jurisdiction of the Interstate Commerce Commission, removes any basis upon which our jurisdiction might rest. Apart from providing terminal facilities for its rail traffic, defendant Southern Railway Company is engaged in the business of furnishing wharfage and other terminal facilities in connection with common carriers by water subject to the Shipping Act, 1916, as amended, on traffic transported exclusively by water or by water and truck. Defendant's business in relation to the latter traffic is separable from its function as a rail carrier, and, in our view, is not a matter as to which the mandate of section 33 of the Shipping Act, 1916, is applicable. *Buxton Lines v. Norfolk Tidewater Terminals*, 705 (706).

Prior notice by defendants of the changes in the assailed charges, regulations, and practices effective April 1, 1937, is indicated to have been furnished complainants and all others interested in such changes. Without passing upon the adequacy of such notice, the Commission desires to make the observation that ample notice should be given of rate changes by "other persons" subject to the act. *Id.* (707).

SHIPPING INSTRUCTIONS. *See* BILLS OF LADING.

SIMILARITY OF TRAFFIC, SERVICES, CIRCUMSTANCES, AND CONDITIONS.

The probative force of evidence regarding revenues on wool and other commodities, such as shoes and cotton piece goods, is considerably impaired because of the dissimilarity of these commodities from a transportation standpoint. *Wool Rates From Boston To Philadelphia*, 20 (21).

The fallacy of basing rates solely upon relative bulk and weight when the commodities are greatly dissimilar in other important respects is apparent. Evidence in justification of increases in rates ranging from 8 to 81 percent upon the ground of the relatively greater displacement of space by wool and mohair than by articles which are products of a high degree of manufacture, of much higher value, and which require far greater care in handling, is not convincing. *Id.* (22-23).

SIMILARITY OF TRAFFIC—Continued.

Prejudice to shippers and receivers of wool cannot be predicated upon the charges for transporting other products which differ essentially in character from wool and supply widely dissimilar demands. *Boston Wool Trade v. M. & M. T.*, 24 (30).

To determine questions of undue and unreasonable prejudice and disadvantage and unjust discrimination, it is pertinent to consider whether the services furnished differed. *American Tobacco Co. v. C. G. T.*, 53 (56).

Unless conditions incident to handling and transportation warranted higher charges, discrimination within the contemplation of the statute is established. Conversely, such conditions, to justify higher charges, must have resulted in some detriment to carrier comparable in degree to amount of higher charges. *Id.* (56).

Rates in particular trade may not be required to be adjusted on basis obtaining in other trades in which there may be present entirely different circumstances and conditions with regard to cost of operation, character of cargoes, competition, and other matters. *Port Utilities Commission of Charleston v. Carolina Co.*, 61 (70).

Totally different conditions arising in water transportation as compared with railroad transportation should not be lost sight of in considering question of responsibility for discrimination where common carriers by water, possessing ability, among other things, to shift vessels from one port to another, voluntarily meet and enter into definite agreement that differentials against certain ports shall be such and such and that none of the carriers, no matter from which ports they operate, shall depart from those differentials while a party to such agreement. *Id.* (70).

Evidence tending to show that in different trades distance to a large extent is disregarded in rate making, while admissible, may or may not have considerable probative force. Failure to show similarity of conditions in the trades in respect of cost of operation, character of cargoes, competition, and other matters derogates greatly from value of evidence. *Id.* (70-71).

Contention, on one hand, that, because parity rates from different ports are accorded certain commodities, carriers should be compelled to grant parities on other commodities, and contention, on the other hand, that carriers should eliminate all parities, overlook the great difference in circumstances surrounding parity and non-parity commodities and different operating conditions with respect to the districts involved. *Id.* (71).

Carriers' custom of separating for rate-making purposes their westbound from their eastbound operations is defensible in view of recognized dissimilarity of operating conditions in eastbound and westbound trades. *Everett Chamber of Commerce v. Luckenbach S. S. Co.*, 149 (153).

There being nothing tending to show that the circumstances surrounding the trades and the carriers engaged therein are comparable, the probative value of the evidence is essentially impaired. *Atlas Waste Mfg. Co. v. New York & Porto Rico S. S. Co.*, 195 (196).

Controlling circumstances vary in different trades: The number of loading ports, the number of discharging ports, the types of cargo and the proportions of each type to the different ports of loading and discharge, et cetera. *Atlas Waste Mfg. Co. v. N. Y. & P. R. S. S. Co.*, 195 (196).

SIMILARITY OF TRAFFIC—Continued.

There is no evidence that the returned bales of goatskins are representative of the type which are exported from the United States, thus precluding adequate comparison of respondent's westbound weight rate with its eastbound measurement rate. *Edmond Well v. Italian Line*, 395 (397).

The competition which a shipper faces is not limited to shipments moving on the same vessel with his shipment, and the possibilities of discriminations, preferences, and prejudices are not removed by giving the same rates to all shippers of the same commodity on the same vessel. Section 19 Investigation, 1935, 470 (495).

Protestants contend that on Gulf traffic the rate factors added to make through rates from and to outports adjacent to San Francisco, Calif., Seattle, Wash., and other ports located on the Pacific coast are less than the rate factors added to make through rates from and to San Diego. No evidence was submitted with respect to operating conditions at such other outports, and the record will not support a finding with respect thereto. *Gulf Intercoastal Rates To and From San Diego*, 516 (518).

To justify an order compelling exact equality of rates, a complainant must show a substantial similarity in the conditions surrounding the transportation under the rates sought to be equalized. Among the factors to be considered are: The value of the service to the shipper, the interest of the carrier, the relative volume of traffic, the relative cost of the service, the competition as between carriers, and the advantages or disadvantages which inhere in the natural or acquired position of the shippers or localities concerned. *Philadelphia Ocean Traffic Bureau v. Export SS. Corp.*, 538 (541-542).

Reference to the rates without a showing of similarity of transportation conditions does not prove unreasonableness of the higher rate on canned coffee. *Id.* (542).

Comparison of rates of one carrier with rates of carriers in other trades is of little value in the absence of a showing of similarity of transportation conditions. *California Pkg. Corp. v. States SS. Co.*, 546 (548).

The meagre evidence as to similarity of traffic and transportation conditions affecting the compared rates minimizes the importance that should be attached to the comparison. *Gulf Westbound Intercoastal Soya Bean Oil Meal Rates*, 554 (559).

The rates complained of are alleged to be unjust and unreasonable as compared with defendants' rates on many other commodities from the Philippines to the United States. The commodities referred to do not compete with, and in no instance are they analogous to, rope. They vary in character, volume of movement, value, and stowage, and, by comparison, are of little or no help in determining the reasonableness of the rates complained of. *Johnson Picket Rope Co. v. Dollar SS. Lines*, 585 (539).

Considering the special circumstances and competitive conditions which induced the rate referred to, in a different trade, it is of little, if any, evidentiary value in determining the reasonableness of the rates complained of. *Id.* (589).

Reference is made by protestants to lower rates on lumber to foreign destinations and to charter rates from British Columbia to North Atlantic ports. Obviously such rates do not afford proper comparisons with those in issue in the absence of a showing of similarity of trans-

SIMILARITY OF TRAFFIC—Continued.

portation conditions and the circumstances under which they were made. Eastbound Intercoastal Lumber, 608 (617).

Loading conditions at the respective ports are not materially different from conditions which existed at the time the 16-cent rate was in effect, and, in the absence of evidence that despatch in Puerto Rican ports has improved over 1936 or that facilities at St. Croix are not so favorable as in that year, the difference in loading conditions, of itself, does not warrant an increase in the rate. The 16-cent rate voluntarily established and maintained for a period of time exceeding two years, was prima facie reasonable, and a 56-percent increase therein must be justified. Sugar From Virgin Islands, 695 (697).

The Virgin Islands Company contends that the maintenance of a lower rate from Puerto Rico than from the Virgin Islands is unduly prejudicial to it and other shippers, in violation of section 16 of the Shipping Act, 1916. However, respondents American Caribbean Line, Inc., and Bermuda and West Indies Steamship Company, Ltd., the only carriers transporting sugar from the Virgin Islands, do not operate in the Puerto Rican trade, and there is no evidence that they control the rates from Puerto Rico. While the Ocean Dominion Steamship Corporation and American Caribbean Line carry sugar from Cuba, transportation conditions in that trade are different from those existing in the Virgin Islands trade. Consequently, there is no basis for a finding of undue prejudice. *Id.* (699).

The circumstances and conditions attending defendants' terminal services on the rail, boat, and truck traffic concerned are substantially dissimilar. This dissimilarity warrants corresponding dissimilarity of charge, regulation, and practice. *Buxton Lines v. Norfolk Tidewater Terminals*, 705 (710).

SPACE. See REASONABLENESS; CARGO SPACE ACCOMMODATIONS.

SPLIT-DELIVERIES. See DELIVERY.

STABILITY OF RATES AND SERVICES. See also AGREEMENTS UNDER SECTION 15; CONTRACTS WITH SHIPPERS.

Shippers need rate stability in order to conduct their business on sound principles. *Intercoastal Rates of Nelson S.S. Co.*, 326 (336).

It is said the contract-rate system was adopted to obtain some degree of stability in the rates. Undoubtedly this was one of its effects, at least as to the rates on shipments of contracting shippers, but another effect of this practice is to exclude other carriers as may offer from participating in the transportation of the contracted tonnage. *Intercoastal Investigation, 1935*, 400 (452).

Stability of rates and services is of vital importance to exporters in making quotations for our export markets. *Section 19 Investigation, 1935*, 470 (491).

The use of the cut-rate methods prevents stability. Furthermore, their effect is cumulative and sooner or later they result in complete demoralization of shipping conditions in the trades in which they are used. *Id.* (491).

In order to protect the buyer, c. i. f. prices must be maintained over a period of time. They cannot be revised to correspond with the fluctuations in freight rates which exist under the conditions described in the report. *Id.* (493).

STABILITY OF RATES AND SERVICES—Continued.

It is the history of merchant marines that, where stability of rates exists, services become more regular and frequent and faster ships are introduced with special equipment to serve the peculiar needs of individual trades. The testimony of shippers shows that such services are necessary to fill the needs of modern trade, but, to make these improvements and maintain regular services, carriers must be able to count on a steady flow of commerce at stabilized rates. In the absence of these two closely related factors, carriers cannot afford to schedule sailings for definite dates in advance and at frequent and regular intervals. *Id.* (496-497).

There is clearly much need for stability in rates and shipping conditions in our foreign trade. *Id.* (502).

By law, intercoastal carriers are forbidden 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. The Department is given the power, either upon complaint or upon its own initiative without complaint, to enter upon a hearing concerning the lawfulness of any schedule stating a new individual or joint rate, or charge, or any new individual or joint classification, regulation, or practice affecting any rate or charge, and to suspend the operation of any such schedule for a period not longer than four months. Such provisions of law afford to shippers reasonable rate stability. *Gulf Intercoastal Contract Rates*, 524 (530).

STATE TOLL, DEFINED.

State toll is not a transportation charge, but a charge upon cargo levied by State authorities to provide revenue for the maintenance of wharves. *Boston Wool Trade Assoc. v. General S. S. Corp.*, 49 (52).

STORAGE. *See* FREE TIME; ABSORPTIONS.

STOWAGE. *See* EARNINGS.

SUBSIDIZED LINES. *See* MAIL-CONTRACT PAYMENTS.

SUSPENSION. *See* INTERCOASTAL SHIPPING ACT, 1933.

TARIFF REGULATIONS. *See also* TARIFFS.

The law directs the Department by regulations to prescribe the form and manner in which schedules shall be published, filed, and posted and to reject any schedule filed with it which is not in consonance with law and such regulations. Regulations have been issued pursuant to this mandate. *Intercoastal Rates of Nelson S. S. Co.*, 326 (337).

The fact that the tariff rules of the Department specifically permit the publication of proportional rates supports respondent's view that the publication of such rates is permissible. But this in no way relieves respondent from the mandate of the law that its rates for transportation must not be violative of the Shipping Acts. *Proportional Westbound Intercoastal Rates on Cast Iron Pipe*, 376 (378).

TARIFFS.

In General. *See also* TRANSIT; ILLEGAL RATES; ABSORPTIONS.

A tariff is a system of rates and charges. *Intercoastal Investigation*, 1935, 400 (431).

That tariffs are but forms of words and that in the exercise of its powers to administer the shipping acts the Department can look beyond the forms to what caused them and what they are intended to cause and do cause is well established. *Id.* (492).

TARIFFS—Continued.

In General—Continued.

The usual basis of rate publication in steamship operation is an amount per cubic foot or per 100 pounds, whichever produces the higher revenue to the carrier. Other than in the coastwise and intercoastal trades no instance is disclosed where rates are published by steamship companies on the carload and less-than-carload basis. *Ames Harris Neville Co. v. American-Hawaiian SS. Co.*, 765 (768).

It should be clear that there cannot be a "maximum" tariff any more than there can be a "maximum" practice, as such terms are used in the section under consideration. *Intercoastal Investigation, 1935*, 400 (432).

The issuance of an order terminating the secrecy which surrounds the rates of carriers will enable shippers and others injured by the violations to make more effective use of the remedial procedure established by the Shipping Act and the Rules of Practice. *Section 19 Investigation, 1935*, 470 (500).

By alternative note of respondent's tariffs, S. B. 12 and S. B. 19, reading "Wherever the official classification basis makes a lower charge than on basis of commodity rates, class rates will apply," calculation of charges upon official-classification basis correctly interpreted made class rates as applied to entire weight of shipment the maximum rates on file. *Muir-Smith Motor Co. v. G. L. T. Co.*, 138 (141).

The *Intercoastal Shipping Act, 1933*, requires that schedules shall show all the rates and charges for or in connection with transportation and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates or charges or the value of the service rendered to the consignor or consignee. The purpose of the law is the publication of rates, charges, rules and regulations in such manner as to enable the consignor, or consignee to see for himself the exact price of transportation. No changes therein may be made except by the publication, filing, and posting of new schedules plainly showing the changes proposed to be made. The law directs the Department by regulations to prescribe the form and manner in which schedules shall be published, filed, and posted and to reject any schedule filed with it which is not in consonance with law and such regulations. Regulations have been issued pursuant to this mandate. The suspended tariffs fail to meet the requirements of law and such regulations in material respects. *Intercoastal Rates of Nelson SS. Co.*, 326 (337).

Shepard's tariff SB-I No. 1 contains a port-equalization rule in principle the same as other such rules hereinbefore condemned. This carrier does not separately state each terminal charge. Its terminal rules, like the rules in the other tariffs under consideration, are limited to absorptions of, or allowances for, terminal and other services performed by others. *Intercoastal Investigation, 1935*, 400 (418).

No limit is placed upon the amount of car unloading at Philadelphia or top wharfage or car unloading at Baltimore, or on-carrying charges on shipments destined to Stockton or Sacramento absorbed by respondent. Also, whether respondent calls direct or not at Oakland, Calif., it there absorbs terminal charges in the amount of 50 cents per ton and, if it elects to make delivery by barge at such

TARIFFS—Continued.

In General—Continued.

place, it absorbs the cost thereof without specifying such amount. Such rules are not in consonance with law. *Id.* (419).

Respondents permit storage of property; load and unload lighters, rail cars, or trucks; handle property between such equipment and their own vessels; absorb storage, wharfage, dockage, handling, lighterage, trucking, and toll charges without proper tariff authority; or fail to collect charges for segregation, heavy lifts, or pool cars in accordance with their tariffs, in violation of section 2 of the Intercoastal Shipping Act, 1933. *Id.* (462).

The so-called port-equalization rules contained in the tariffs of respondents are unlawful, in violation of section 2 of the Intercoastal Shipping Act, 1933. *Id.* (463).

Complainant contends that its shipments were interstate shipments within the meaning of item 40 (a) of the tariff of emergency charges filed with the Interstate Commerce Commission, identified as Agent L. E. Kipp's I. C. C. No. A-2611, and that an emergency charge of 2.5 cents provided under part 4, group 521, of that tariff was applicable and should have been applied to its shipments. Item 40 (a) provides that "Where a shipment moves via an all-water * * * route the line-haul emergency charge will be, if a carload shipment, 10 percent of the line-haul transportation charges * * * but not more in any case than the line-haul emergency charge which would be applicable if the shipment moved all-rail from and to the same points." That provision has application only to shipments moving via routes of carriers subject to the jurisdiction of the Interstate Commerce Commission, with which the tariff was filed. It is not applicable to the shipments in issue. Since such a provision does not appear in the tariff of defendants on file with the Commission, the charge of 5 cents assessed and collected under item 85, supplement 36, to defendants' joint tariff SB-I No. 4 was legally applicable. *H. Kramer & Co. v. Inland Waterways Corp.*, 630 (631).

In connection with defendants' contention that they offer a "special" service in the carriage of bulk wheat, it should be noted that the private mills and elevators served are named in their tariffs and, thus, are regular berths for loading and discharging wheat. *Tri-State Wheat Transp. Council v. Alameda Transp. Co.*, 784 (787).

Parties Subject; Filing; Notice; Service:

The filing requirement of section 18 of the act is not applicable to an "other person subject to this act." *Thames River Line*, 217 (220).

The act does not require operators of piers and wharves to file their rates and schedules with the Commission, nor is there any statutory requirement governing the time of notice of their charges. *Philadelphia Ocean Traffic Bureau v. Philadelphia Piers*, 701 (702).

Respondents have engaged, or are engaged, in transportation each as a contract carrier by water in intercoastal commerce without proper tariffs on file with the Department, in violation of section 2 of the Intercoastal Shipping Act, 1933. *Intercoastal Investigation, 1935*, 400 (463-464).

Respondent not shown to be a common carrier by water in intercoastal commerce subject to the Intercoastal Shipping Act, 1933.

TARIFFS—Continued.

Parties Subject; Filing; Notice; Service.—Continued.

An order will be entered striking the suspended tariffs from the Department's file. Schedules of Girdwood SS. Co., 306 (307).

It cannot too strongly be stressed that failure of a carrier, whether contract or common, to properly publish and file its rates is as serious a violation of the act as its failure to observe such rates after they have been published and filed. Intercoastal Investigation, 1935, 400 (461).

As long as the words "contract carrier" remain in the statute, it is the duty of every contract carrier to file tariffs as contemplated by the act. The filing of copy of the charter by the charterer does not satisfy such filing requirement. *Id.* (468).

Rules requiring the filing of schedules of export rates by common carriers by water in foreign commerce prescribed. Section 19 Investigation, 1935, 470 (502-503).

The Department finds that respondent is not a common or contract carrier by water in intercoastal commerce. An order will be entered striking its intercoastal tariff SB-I No. 2 from the files of the Department and discontinuing the proceeding without prejudice to the filing of schedules at such future time as respondent may enter intercoastal commerce. Intercoastal Schedules of Hammond Shipping Co., 606 (607).

The record establishes clearly that Hammond Shipping Company, Ltd., is not engaged in intercoastal commerce. It, therefore, is not a common or contract carrier in intercoastal commerce and is not subject to the provisions of the Intercoastal Shipping Act, 1933. The existence of its schedules holding itself out as a subject carrier when it admits that it is not in the trade and will not accept cargo if offered amounts to a false representation, contrary to the letter and spirit of the law. *Id.* (607).

As reference to paragraph 3 of section 18 shows, the ten-day notice is not applicable to reductions in rates; nor is such notice in any case required by the Board. Thames River Line, 217 (221).

Until revised tariff was filed, respondent, in so far as it engaged in transportation of property at class rates, did not comply with paragraph 2 of section 18 of the Shipping Act and rule 15 of the Board's tariff regulations. North Pacific SS. Line, 227 (229).

A tariff, which purports to publish through routes but does not show as participating therein a carrier which forms a necessary link, is in direct contravention of the provisions of the statute. Intercoastal Rates From Mount Vernon, Wash., 360 (362).

Language could not have made clearer the intent of the legislature than as set forth in section 2 of the Intercoastal Shipping Act, 1933. This section imposes a positive duty on respondents. As one of the principal aims of the law is uniformity in treatment, the requirement of publication is to enable the shipper not only to ascertain from examination of the tariff what the exact rates and charges are to him, but also to his competitor, and failure of a carrier to properly publish, file, and post all of its rates and charges for or in connection with intercoastal transportation and the rules which in anywise change, affect, or determine any part of such rates or charges is as serious a violation of law as its failure to

TARIFFS—Continued.

Parties Subject; Filing; Notice; Service.—Continued.

observe strictly such rates, charges, and rules after they have been properly published and filed. Intercoastal Investigation, 1935, 400 (421).

If, in connection with intercoastal transportation, a terminal or other charge is made, or a privilege or facility is granted or allowed or a rule or regulation in anywise changes, affects, or determines any part or the aggregate of the rates, fares, or charges, or the value of the service to the passenger or shipper, it must be stated separately in the tariff of the carrier regardless of who makes the charge, grants or allows the privilege or facility, or applies the rule or regulation. *Id.* (434).

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. *Id.* (435).

Every route must have a published rate on file with the Department. *Id.* (440).

The requirement of prior notice as regards publication of reductions in rates appears for the first time in the Intercoastal Shipping Act, 1933. Prior to that act, no obligation rested upon carriers to give public notice of such reductions. The law only required the filing of maximum rates, fares, and charges and prohibited carriers from demanding, charging, or collecting a greater compensation except with the approval of the Board and with ten days public notice, which requirement the Board had the power to waive for good cause shown. *Id.* (444).

The tariffs containing the rates under consideration were filed within the time limit prescribed by law, and the rates and charges therein contained are the only rates and charges which the two respondents may legally charge or collect. *Id.* (445).

It cannot too strongly be stressed that every transportation service, or service in connection therewith, must be clearly shown in the tariff before a carrier may lawfully engage therein, and this applies with equal force to services for which a charge is made as well as to services for which no charge is made; and that failure to properly publish, file, and post all the rates and charges for or in connection with transportation and the rules which in anywise change, affect, or determine any part of such rates or charges is as serious a violation of law as the failure to observe strictly such rates and charges after they have been properly published and filed. A penalty is prescribed by law as heavy for one violation as for the other. *Id.* (447-448).

It should be clearly understood that respondents may not legally absorb charges of any character whatsoever or perform any service of any nature, free of charge or otherwise, for or in connection with intercoastal transportation unless and until proper provisions have been made in the tariff. *Id.* (449).

The rates, charges, rules, and regulations which every common carrier by water in intercoastal commerce is required to file and post are those "between intercoastal points on its own route; and, * * *

TARIFFS—Continued.

Parties Subject; Filing; Notice; Service.—Continued.

between intercoastal points on its own route and points on the route of any other carrier by water." Calmar is not a common carrier by water engaged in intercoastal transportation from and to Gulf ports. Such ports are not on its own route; nor has it established through routes for intercoastal transportation with any other carrier by water from and to such ports. The filing of such rates, charges, rules, and regulations in issue are not those contemplated by the act, and respondent should be required to cancel them. *Id.* (450).

"A" carriers formerly members of the United States Intercoastal Conference obligated themselves not to participate in intercoastal transportation from or to points south of Philadelphia. However, they are parties to Agent Thackara's tariffs which published, without routing restrictions, rates and charges from and to such points. The record shows that they are not engaged in such transportation, and each such carrier should be required to cancel the rates and charges between points not on its route or on the route of any other carrier by water with which it has not established through routes. *Id.* (450).

The filing of rates and charges by carrier for transportation of property between all ports on the Gulf of Mexico from Tampa, Fla., to Corpus Christi, Tex., both inclusive, and ports on the Pacific coast, and similar rates and charges named by other carriers between intercoastal points as to which no transportation service is maintained, is not in consonance with section 2 of the Intercoastal Shipping Act, 1933. *Id.* (463).

At the time referred to by the witness, carriers engaged in intercoastal transportation were only required to file their maximum rates. Nothing in the law then in force prevented them from collecting compensation for their services lower than such maximum rates. Gulf Intercoastal Contract Rates, 524 (528-529).

Section 2 of the Intercoastal Shipping Act, 1933, provides that, unless shorter notice is authorized, new schedules shall become effective not earlier than thirty days after date of posting and filing thereof with the United States Shipping Board, now the United States Maritime Commission. The tariff involved was filed August 31, 1935, within this requirement of the statute. The fact that it was not posted at origin ports does not invalidate the rates published therein. *C. W. Spence v. Pacific-Atlantic SS. Co.*, 624 (626).

The publication and filing of a tariff imposes an obligation upon a carrier to serve the ports or places named therein, and a refusal to book cargo, if at the time space is available, for the sole reason that more profitable bookings are available elsewhere is not sanctioned by the Shipping Acts. *Sugar From Virgin Islands*, 695 (698).

Section 18 of the Shipping Act, 1916, contemplates that tariffs filed pursuant thereto shall serve as information to shippers and others interested regarding available all-water routes between interstate ports as well as rates or charges for or in connection with the transportation over such routes. Tariffs naming rates for service which does not exist are meaningless, and the filing thereof amounts to false representation contrary to the letter and spirit of the law. *Id.* (700).

TARIFFS—Continued.

Parties Subject; Filing; Notice; Service.—Continued.

Prior notice by defendants of the changes in the assailed charges, regulations, and practices effective April 1, 1937, is indicated to have been furnished complainants and all others interested in such changes. Without passing upon the adequacy of such notice, the Commission desires to make the observation that ample notice should be given of rate changes by "other persons" subject to the act. *Buxton Lines v. Norfolk Tidewater Terminals*, 705 (707).

The services performed by terminal companies on eastbound shipments for which a charge of 5 cents per 100 pounds is collected includes the mailing of arrival notices. The mailing of arrival notices to the consignee shown in the bill of lading is clearly a duty of the carrier for which an extra charge is not proper, and, since the actual sorting and delivery of shipments upon which the charge is assessed is performed by the carrier, there appears a lack of any service by these agencies which would warrant its collection. Other than for deliveries at Atlantic-coast ports by submarks, there is no tariff authority for such a charge. Under section 2 of the Intercoastal Shipping Act, 1933, the duty of publishing, filing, and posting all such charges rests upon respondents. *Intercoastal Segregation Rules*, 725 (733).

Other Carriers—Rates of:

To hold that a shipper must look beyond the tariffs of the carrier offering him a service to ascertain the rate would be to put the shipper under an onerous obligation not imposed upon him by law. The inclusion of any provision in a tariff which makes the amount of the charge dependent upon the measure of a rate published in tariffs of some other carrier, and more so when such tariffs are not filed with this Department, cannot too strongly be condemned. *Intercoastal Rates of Nelson S. S. Co.*, 326 (339).

The record makes it clear that the rule is impossible of application unless the rates from the point of origin to the port of exit and to other Atlantic ports served by intercoastal carriers are first determined. From point of origin to port of exit, shipments generally move by rail or truck. The rates of rail or truck carriers are not a part of the tariff in question nor are otherwise filed with the Department. As stated in *Intercoastal Rates of Nelson Steamship Co.*, 1 U. S. S. B. B. 326, dealing with a similar rule, "To hold that a shipper must look beyond the tariffs of the carrier offering him a service to ascertain the rate would be to put the shipper under an onerous obligation not imposed upon him by law. The inclusion of any provision in a tariff which makes the amount of the charge depend upon the measure of a rate published in tariffs of some other carrier, and more so when such tariffs are not filed with this department, cannot too strongly be condemned." *Intercoastal Investigation*, 1935, 400 (415-416).

The inclusion of any provision in a tariff which makes the amount of the charge dependent upon the measure of a rate published in tariffs of some other carrier cannot too strongly be condemned. *Id.* (447).

Agreements; With Shippers; With Other Carriers:

The law prohibits special arrangements between shippers and carriers unless the terms thereof are fully disclosed in the tariff. *Id.* (416).

TARIFFS—Continued.

Agreements; With Shippers; With Other Carriers—Continued.

The rate and minimum weight in the tariff afford the only legal basis upon which freight charges may be collected, and any agreement to the contrary cannot be sanctioned by the Department. *Id.* (455).

It cannot too strongly be stressed that the terms and conditions of the tariff may not be waived or changed by private agreement with shippers. *Id.* (456).

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. *Id.* (440).

In *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 455, it was found that under the provisions of the *Intercoastal Shipping Act, 1933*, the rate in the effective tariff affords the only legal basis upon which freight charges may be collected, any agreement to the contrary notwithstanding. *C. W. Spence v. Pacific-Atlantic S. S. Co.*, 624 (626).

Ambiguity; Uncertainty; Conflict:

It is true that tariffs must be construed strictly and that wherever they are ambiguous the doubt should be resolved against carrier. Nevertheless, a fair and reasonable construction must be given. The terms in question must be construed in the sense in which they are generally understood and accepted commercially. Shippers cannot be permitted to avail themselves of a strained and unnatural construction. *Thomas G. Crowe v. Southern S. S. Co.*, 145 (147).

A principle of tariff construction is that tariffs should be specific and plain. The Board's tariff regulations throughout direct the carriers to this end and provide that tariffs filed and kept open to public inspection in compliance with section 18 of the statute shall be explicit. *Gelfand Mfg. Co. v. Bull S. S. Line*, 169 (170).

Where a question of tariff interpretation is in issue, indefiniteness and ambiguity of tariff provisions, which in reasonableness permit of misunderstanding and doubt by shippers, require interpretation of such provisions against the carrier. *Id.* (170-171).

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

TARIFFS—Continued.

Ambiguity; Uncertainty; Conflict—Continued.

cated to which of the several terminal docks the "recognized cost" will be assessed. *Oakland Chamber of Commerce v. American Mail Line*, 314 (317).

Although the carriers under the rule may call direct at nonterminal ports for freight in any quantity from one shipper or supplier, it is provided that such cargo must be assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles, and/or logs. No such restriction, however, is placed on cargo moving from nonterminal ports under the divisional rate agreements permitted under the rule to meet the competition of direct calls by conference members. Vessels handling cargo by direct call at nonterminal ports from one shipper or supplier, subject to the minimum rate requirement set forth above, "are permitted to accept any other additional cargo offering from the same dock in any quantity on the same terms, conditions, and rates provided in (e)(1)." This provision of the rule is not free from ambiguity. It will be noted that, while acceptance of additional cargo is permitted, the words "same terms, conditions, and rates" may mean that, for example, a shipper or supplier other than the shipper or supplier of the first lot if offering 50 tons is assessed freight charges on the basis of 500 tons. What has been stated in respect of the \$1 extra on additional cargo from docks with conference terminal ports other than declared docks applies here with equal force. *Id.* (317-318).

Rules which do not disclose the cost of the service or the specific amount to be absorbed clearly open the gate to rebates, undue preferences and prejudices prohibited by law. *Intercoastal Rates of Nelson SS. Co.* 326 (340).

The suspended schedules would have the effect of naming three conflicting rates, 51, 43, and 40 cents, on a minimum weight of 30,000 pounds. Under a familiar rule of construction, the lowest of such rates would be legally applicable. Such legally applicable rate would be in excess of 27 percent under the lowest competitive rate. Tariff conflicts of the character here described should be avoided. *Id.* (343).

From the rule or exceptions, or proposed exceptions, or from the remainder of the tariff, it is impossible to ascertain the legally applicable rates. The Department would not be warranted in permitting to become effective exceptions to the rule the purpose of which is to multiply the defect, which has been condemned hereinbefore. *Id.* (345).

Respondents admit that the proposed exceptions may lead them into difficult complications but direct attention to the fact that they "have it in at carrier's option." This means that the carrier would be the sole arbiter of the application of the proposed exception. The exception as proposed would create uncertainty on the part of competing shippers and lend itself to practices condemned by law. *Intercoastal Rates of American-Hawaiian SS. Co.*, 349 (351).

If the suspended schedules are allowed to become effective, there would exist conflicting rates of 60 cents, minimum 24,000 pounds and 87.5 cents, minimum 40,000 pounds, for the same transportation. Normally, when rates are published, based on different minimum weights, the higher rate is made applicable in connection with the lower mini-

TARIFFS—Continued.

Ambiguity; Uncertainty; Conflict—Continued.

imum weight. The record presents no justification for the reversal of this rate-making plan. Conflicts of this character should be avoided. In such circumstances, the rate which results in the lower charge applies, and the higher rate based on the higher minimum weight would never be applied. It, therefore, has no place in the tariff. The Department cannot lend approval to such conflicts in rates. Westbound Intercoastal Rates on Dates, Etc., 352 (354).

It is the purpose of carriers to continue the rate of 113.5 cents on the grade of seed used for planting purposes and to establish the new rate of 55 cents on the grade of seed used for human consumption. Inasmuch as the application of the proposed rate is also unrestricted and would govern on a carload of any grade of seed offered for shipment if allowed to become effective an anomalous tariff situation would be created which the Department is not warranted in permitting. Eastbound Intercoastal Rates on Squash Seed, Carloads, 355 (356).

In spite of the provisions of section 2 of the Intercoastal Shipping Act, rule 2 of Agent Thackara's tariff SB-I No. 4 provides "Except as otherwise provided herein, rates named herein apply from ship's tackle at Intercoastal loading port to ship's tackle at delivering carriers' discharging port via routes set forth herein, and do not include Tolls, Wharfage, or other Accessorial or Terminal charges." Nowhere in the tariff is the term "ship's tackle" defined. The record shows that at some points this expression means the end of the ship's hook while at other points it means place where goods rest on the dock. Whether a charge for the movement of goods between ship's hook and point of rest is collected from the shipper or absorbed by the carrier it is governed by local meaning of that term. Intercoastal Investigation, 1935, 400 (413).

The tariff does not specify the "established" loading or receiving terminals. As some of the ports embrace a considerable shore line where numerous terminals are located, from the tariff it is impossible for the shipper to determine the exact place at which the transportation begins or ends. Furthermore, a tariff rule such as contained in paragraph (b), which does not specifically disclose the particular requirements a shipper must meet that the written agreement there contemplated be executed, inevitably leads to inequality between shippers Id. (413-414).

From the tariff the shipper knows the minimum charge for the service in question, but the maximum charge does not appear therefrom. Id. (414).

Rules which do not disclose the specific amount absorbed even if the charge is one that properly may be absorbed, defeat the legally established rate and unwittingly open the door to rebates. Id. (414).

The tariff does not define the term "ship's tackle." Inferentially, it may be gathered from the rules that "ship's tackle" is the same as ship's hook, but, because of the confusion this term has created, the law will be best served by making its meaning clear in the tariff. Id. (416).

TARIFFS—Continued.

Ambiguity; Uncertainty; Conflict—Continued.

From the exceptions to the rule it will be observed an absorption in excess of 3 cents per 100 pounds is permitted at Chester, Pa., but the tariff does not indicate the limit to such absorption. At New York, Dollar and Panama Pacific, and at Philadelphia, Grace, apply a maximum equalization of 6 cents per 100 pounds up to 250 net tons on iron and steel articles. In the case of a shipment in excess of that quantity, the shipper will be charged 6 cents per 100 pounds less on the first 250 net tons than on the remainder of the weight of the shipment, and, should two shippers make two separate shipments aggregating in excess of 250 net tons neither one could tell what the charges would be to him. Id. (416).

Paragraph (e) of the rule provides for port equalization in principle the same as provided for in rule 9 of Agent Thackara's tariff SB-1 No. 4. Port equalization is also practiced by respondent on east-bound traffic, rule 3 (e) of its SR-1 tariff No. 2. From these rules, it is not possible for a shipper to state what the rates or charges will be, and what was stated in respect of the port-equalization rule in Agent Thackara's tariff applies here with equal force. Id. (417).

Another rule contained in Shepard's tariff which fails to meet the requirements of law is that contained in first amended page 70 reading as follows: "Ports marked '#' are not regular ports of loading. Cargo will be accepted for loading at such ports only when accompanied by permit issued by carrier or carrier's agents. Application for permit may be made to any office of the carrier or carrier's agents. Permit, if issued, will be in the form shown below." This rule does not disclose the requirements a shipper must meet before a permit is issued to him. Such rule lends itself to defeating the law which makes it unlawful for any 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. Id. (420).

Members of the Gulf conference publish what are termed "tariff rates" and "contract rates." As both rates are published in the same tariff, these terms are misleading. Id. (451).

The tariffs filed by each respondent fail to show plainly the places between which freight is carried; or to name all the rates and charges for or in connection with transportation between intercoastal points on its own route, or between intercoastal points on its own route and points on the routes of other carriers by water with which it has established through routes for intercoastal transportation; or to state separately each terminal or other charge, privilege, or facility, granted or allowed, or the rules and regulations which change, affect, or determine such aforesaid rates or charges, or the aggregate of such aforesaid rates or charges, or the value of the service rendered to the consignor or consignee, in violation of section 2 of the Intercoastal Shipping Act, 1933. Each respondent should be required to amend its tariffs as to show plainly, among other things, (a) all the rates for the transportation between points on its own

TARIFFS—Continued.

Ambiguity; Uncertainty; Conflict—Continued.

route, or between points on its own route and points on the route of each carrier by water with which it has established through routes for intercoastal transportation; (b) the specific terminals between which each rate applies; (c) each service, such as storage, handling, piling of lumber, wharfage, lighterage, barging, segregation, stenciling, pool cars, and heavy lifts, rendered to the consignor or consignee; (d) the charge for each such service; (e) 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. *Id.* (461-462).

The exception is based on the ground, in substance, that requiring publication of specific terminals between which the rates apply will result in loss of revenue to respondents. At present intercoastal rates apply from or to such indefinite places as "San Francisco Bay," "Los Angeles Harbor," or "New York Harbor." These terms are too broad, cover many miles of shore line, and include many terminals not accessible to ocean carriers. From the tariffs shippers cannot state the particular point at which their cargo is received or delivered by the carrier. The requirement referred to is contemplated by law for the protection of the shipper as well as the carrier. As respondents are free to designate in their tariffs as many terminals, public or private, as they wish, the contention does not appear to be well founded. *Id.* (465).

A further criticism of the rule is that it results in an undisclosed rate to the shipper. Knowledge of the details of shipments subject to the rule is necessary to determine the actual rate charged. The disclosure of such information, however, is unlawful under section 20 of the Shipping Act, 1916. *Transportation of Lumber Through Panama Canal*, 646 (649-650).

Lumber-berth-quantity-allowance rules found to violate section 2 of the Intercoastal Shipping Act, 1933, in that they do not show definitely all the rates and charges for or in connection with the transportation of eastbound intercoastal lumber. *Id.* (650).

Tariff rules which are indefinite and ambiguous are unlawful under section 2 of the Intercoastal Shipping Act, 1933. *Intercoastal Lumber Rate Changes*, 656 (658).

Tariff provisions should be responsive to the requirements of the general public. *Armstrong Cork Co., et al. v. American-Hawaiian S.S. Co., et al.*, 719 (724).

Where the specific provision differs from the general mixing rule maintained by defendants, special justification for it should be shown, particularly where, as here, the provision was established for the benefit of one shipper and results in rated disparity and disadvantages detailed. *Id.* (724).

Requirements of carriers in respect to bill-of-lading descriptions must be of general application to all classes of shippers and shipments; otherwise, undue preference and prejudice will result. It apparently is the intent of respondent that all shipments must be similarly described, but the rule does not state whether the contents of each lot in a pool-car shipment submarked must also be described in detail. It is not clear whether each submarked lot must also be

TARIFFS—Continued.

Ambiguity; Uncertainty; Conflict—Continued.

separated by kind, size, brand, or grade, and, if so, whether charges shall be assessed in accordance with the rule. For these reasons, the rule is ambiguous and, therefore, unlawful. Intercoastal Segregation Rules, 725 (734).

The suspended schedules do not specify that the charges to be assessed and the rules and regulations determining such charges are those applicable at the port of transshipment. They contain no reference to free time, notwithstanding respondents' intention that periods comparable in character to free time are to elapse between arrival of the cargo at the transshipment port and assessment of storage or other terminal charges. In both of these respects the schedules fail to comply with the requirement of section 2 of the Intercoastal Shipping Act, 1933, that schedules shall specify all terminal or other charges, privileges allowed, and any rules or regulations which change, affect, or determine the charges or the value of the service rendered. Furthermore, under respondents' interpretation of the schedules in connection with free time, the allowance of different periods as between different consignees would effect inequality of treatment as between shippers and permit undue preference and prejudice, in violation of section 16 of the Shipping Act, 1916. Intercoastal Rates via On-Carriers, 760 (763-764).

Complainants on brief advocate no change in the present rules and regulations applicable on wheat except for a suggested minor correction of Item 514 of Agent Williams' eastbound SB-I No. 3, which permits the vessel to unload on overtime at ship's discretion and shipper's expense. There is testimony that this creates uncertainties as to shipper's costs and discrimination against bulk wheat, since "other commodities on the ship probably may and could be discharged on straight time." But there is no evidence that the rule operates to unduly prefer or prejudice any person, locality, or description of traffic. Tri-State Wheat Transp. Council v. Alameda Transp. Co., 784 (788).

TERMINAL FACILITIES. See also **BERTHING.**

It is the duty of carriers to provide adequate terminal facilities, and, as any shipper is entitled to make use of the rates from and to Emeryville, respondents are expected immediately to meet this obligation at that place. Intercoastal Rates To and From Berkeley, 365 (368).

Requiring every common carrier by water in intercoastal commerce to publish, post, and file schedules showing all the rates, fares, and charges "for or in connection with transportation," stating "separately each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, or charges, or the value of the service rendered to the passenger, consignor, or consignee" is in contemplation of the obligation that rests upon each such carrier serving a point to provide adequate terminal facilities. This obligation is one that may be fulfilled by the carrier itself or through an agency. Intercoastal Investigation, 1935, 400 (435).

Persons engaged in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water are subject to the Shipping Act, 1916. Section 16 thereof makes it un-

TERMINAL FACILITIES—Continued.

lawful for any such person to subject any particular person, which term includes a common carrier by water in intercoastal commerce, or any particular locality, or description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 17 of that act imposes upon such persons the obligation of observing just and reasonable practices relating to or connected with the receiving, handling, storing, or delivering of property. Although such persons are not included in the order instituting the investigation, it is not amiss to mention the fact of record that Cilco Terminal Co., Inc., the only terminal facility at Bridgeport, Conn., is owned by the City Lumber Co., a receiver of lumber at that place. Although the terminal company accepts and handles all commodities, it refuses to accept or handle lumber consigned to the competitors of its parent organization. This results in a violation of law. *Id.* (436).

In procuring terminal facilities, carriers should make proper arrangements to safeguard the obligations imposed upon them by law. Such obligations the Department does not have the power to waive. *Id.* (465).

In connection with defendants' contention that they offer a "special" service in the carriage of bulk wheat, it should be noted that the private mills and elevators served are named in their tariffs and, thus, are regular berths for loading and discharging wheat. *Tri-State Wheat Transp. Council v. Alameda Transp. Co.*, 784 (787).

TERMINAL RATE, DEFINED.

A "terminal rate" is that between two intercoastal points when the entire transportation service is performed by a single carrier. *Intercoastal Rates To and From Berkeley and Emeryville, Calif.*, 365 (367).

If single carrier performs the entire transportation service between two points, the rate is a "terminal rate." *Intercoastal Investigation, 1935*, 400 (440).

THROUGH ROUTES AND THROUGH RATES. *See also* COMMERCE.

Respondents operating beyond Seattle assume the rates for transportation of Skagit River Navigation & Trading Co. as part of their operating expenses. In addition Panama Mail Steamship Co. and States Steamship Co. assume as an operating expense the rates for transportation of the line performing the service from Seattle to San Francisco. This is done on the theory that if the transportation service were performed by them directly the cost thereof would be charged to operations. The through bills of lading, which are issued by respondents operating beyond Seattle, only show the name of the issuing carrier and do not disclose the name of any other carrier participating in the transportation. This method of constructing through rates is not sanctioned by the Department. *Intercoastal Rates From Mount Vernon, Wash.*, 360 (362).

A through route contemplates a through rate, which may be the sum of separately established factors or an amount jointly published by all the carriers participating in the transportation. The cancellation of a joint rate does not in and of itself cancel the through route. If the established through routes from Mount Vernon or Stanwood to intercoastal destinations on the Atlantic coast are to be continued, the carriers participating therein must comply with the requirements of section 2 of the Intercoastal Shipping Act, 1933. *Id.* (363).

THROUGH ROUTES AND THROUGH RATES—Continued.

If a through route has been established by two or more carriers, the law contemplates the establishment of "through rates," which may be the sum of separately established factors or an amount jointly published by all the carriers participating in the transportation. *Intercoastal Rates To and From Berkeley*, 365 (367).

The act makes no distinction whatsoever between points on deep water and points on shallow water. The Berkeley Transportation Co. is a common carrier by water. It is true its operations are limited to points on San Francisco Bay, but, by joining in through routes and through rates for intercoastal transportation, as proposed, it becomes subject to the act. *Id.* (367).

The issuance by respondents of through bills and according through rates for the two local transportation movements concerned in the proceeding is prohibited by section 16 of the Shipping Act, which makes unlawful the furnishing by subject carriers of transportation at less than their regular rates through false billing or by other unfair device or means. *Pablo Calvet & Co. v. Baltimore Insular Line*, 369 (371).

If a through route has been established and two or more carriers perform the transportation service, 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. *Intercoastal Investigation, 1935*, 400 (440).

There is no provision in the law for the establishment of through rates by absorbing the terminal rates of another carrier for the purpose of establishing through rates for a through route composed of two or more carriers over which route no joint through rate has been fixed by agreement. *Id.* (440).

A "through route" is an arrangement, express or implied, between connecting carriers 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" is not necessarily a "joint rate." It may be merely an aggregation of separate rates fixed independently by the several carriers forming the "through rate," as where the "through rate" is "the sum of the locals" of the several connecting lines or is the sum of lower rates otherwise separately established by them for through transportation. Ordinarily, "through rates" lower than "the sum of the locals" are joint rates. *Id.* (445-446).

Carriers are not required to establish joint through rates for intercoastal transportation, but, when they voluntarily do so, their cancellation depends upon whether or not such action violates any provision of law. *Intercoastal Rates To and From Berkeley (No. 2)*, 510 (512).

In view of the competitive situation, the cancellation of the joint rates involved would result in undue and unreasonable preference and advantage to Oakland and Richmond and shippers there located and undue and unreasonable prejudice and disadvantage to Berkeley and Emeryville and shippers there located, in violation of section 16 of the Shipping Act, 1916. *Id.* (512).

It is desirable to point out that carriers maintaining through routes and joint rates are expected to furnish reasonable service to the public. *Gulf Intercoastal Rates To and From San Diego (No. 2)*, 600 (605).

In the absence of a through route, a movement on local bills of lading between Los Angeles and San Diego becomes intrastate. Any movement

THROUGH ROUTES AND THROUGH RATES—Continued.

between points within the same state is not subject to the Department's jurisdiction unless it constitutes part of a through-route movement in interstate or foreign commerce. *Id.* (605).

Schedules proposing to change by qualification existing schedules governing the application of through routes and joint rates provided therein for the transportation of freight from Atlantic to Pacific coast ports found not justified. *Intercoastal Rates via On-Carriers, 760 (764).*

Schedules proposing to cancel through routes and joint rates for transportation of freight from Atlantic coast ports to Vancouver, Wash., found justified. *Westbound Intercoastal Rates to Vancouver, Wash., 770 (774).*

TIME IN TRANSIT. *See SERVICE.*

TRAMPS.

Section 1 of the Shipping Act, 1916, excludes from the regulatory provisions of the act every "cargo boat commonly called an ocean tramp." This exemption of tramps from the regulatory provisions of the 1916 act does not place any limitation upon the Department in its promulgation of rules and regulations under section 19 of the Merchant Marine Act, 1920. As defined earlier in the report, a tramp is a carrier transporting on any one voyage cargo supplied by a single shipper only under a single charter party or contract of affreightment. The best example of such a carrier is the tanker. The rules and regulations proposed under section 19 of the Merchant Marine Act, 1920, exempt, for the present, the tramp as so defined for the reason that the evidence of record in the investigation does not show that competitive methods employed by such carriers in our export trades have produced conditions unfavorable to shipping. Much of the cargo lifted by these tramps is in bulk; therefore, the proposed rules and regulations exempt transportation of cargo loaded and carried in bulk without mark or count. *Section 19 Investigation, 1935, 470 (498-499).*

TRANSIT.

Transit is granted by rail carriers and has no application in connection with movements by water unless the shipments move as through shipments from interior-country points of origin to final destination. The Commission's jurisdiction extends only to local port-to-port transportation, and on such traffic the rate is that published in the tariff in effect at time of shipment. *Commodity Rates Between Atlantic and Gulf Ports, 642 (645).*

Proposed rule providing that, as to flour milled in transit, the rate will be that in effect on date of forwarding the flour from the transit point, irrespective of the date of shipment into the transit point, is not approved and should be cancelled. *Id.* (645).

Proposed rule with respect to the effective date of rate changes on grain milled in transit has not been justified. (*Id.* 645).

TRANSPORTATION. *See SERVICE.*

TRANSSHIPMENT. *See OPERATION.*

TRUCK RATES.

The reasonableness of the truck rates between San Diego and Los Angeles is a matter within the jurisdiction of the Railroad Commission of the State of California, and the findings of that Commission cannot be anticipated by the Department. Furthermore, such rates have little, if any, bearing on the reasonableness of rates subject to the jurisdiction

TRUCK RATES—Continued.

of the Department. Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (604).

UNIFORMITY OF RATES, ETC.

Unjustness and unreasonableness of a given rate is not proved by merely showing that a lower rate existed over the line of another carrier. *Bonnell Elec. Mfg. Co. v. Pacific SS Co.*, 143 (144).

While it appears to be fairly well established that rooms located in the stern of a ship are generally rated lower than first class, there are exceptions to this general practice, and it may be fairly stated that there has been a long existing lack of uniformity in classification as between passenger vessels and likewise as between passenger accommodations on the same vessels. The particular classification under which a passenger travels is based on more than location and type of stateroom; it includes as a very important element the character and extent of the service in connection with the stateroom accommodations and the service on the ship generally, including the extent to which a passenger may enjoy the freedom of the ship. *Passenger Classifications and Fares, American Line SS. Corp.*, 294 (302).

Although it is true that under the proposed tariff some rooms that may be compared with rooms on the new Grace Line ships are reduced in price, whereas under the existing tariff the price of these particular rooms is approximately the same as similar rooms on the Grace Line ships, this difference in price does not necessarily make improper the rating of these rooms by either line. The difference may very well be compensated for by difference in ships, appointments, service, length of trip, as well as other considerations. For instance, it is admitted that the Grace Line ships are newer and more modern than respondent's ships, and the Grace Line itinerary is longer and more attractive. *Id.* (303).

An order by the Department requiring respondents to admit complainant to membership in the conference with a rate differential found not justified. *Wessel, Duval & Co. v. Colombian SS. Co.*, 390 (394).

It is in the public interest that respondents operating between points on the Atlantic coast and points on the Pacific coast establish and maintain uniform rates and charges for intercoastal transportation between such points. *Intercoastal Investigation, 1935*, 400 (462).

Although the proposed conclusion is that uniformity in the rates and charges is in the public interest, there is nothing in the report compelling respondents to observe uniform rates and charges. *Id.* (466).

VALUE OF COMMODITY. *See also* COST OF SERVICE; VALUE OF SERVICE.

A scale of rates on Alaskan copper ore graduated according to the values of the ore is recommended to carriers for their earnest and early consideration. *Alaskan Rate Investigation*, 1 (8, 9).

Value is a factor properly to be considered by carriers in the determination of rates for their service, but, where two commodities are practically identical in transportation characteristics and are directly competitive, any difference in the values of such commodities should be appreciable and substantial in order to justify the application of higher rates on the one than on the other. *Thomson Mfg. Co. v. Eastern S. S. Co.*, 58 (59).

VALUE OF COMMODITY—Continued.

While one of the factors for use in the consideration of the justness and reasonableness of a given rate, value when standing alone is not determinative. *Dobler & Mudge v. Panama R. R. S. S. Co.*, 130 (131).

Value is an important element of rate making, but cost of service is also a factor; and, hence, it is often true that charges for transporting a cheap article are greater in proportion to its value than charges for transporting a high-grade article. *Atlas Waste Mfg. Co. v. N. Y. & P. R. S. S. Co.*, 195 (196-197).

The comparisons, unsupported by evidence of value of commodities, value of service, volume of movement, and other factors commonly considered in determining maximum reasonable rates, are of little probative force. *Gulf Intercoastal Rates To and From San Diego (No. 2)*, 600 (604).

VALUE OF SERVICE. *See also* COST OF SERVICE; VALUE OF COMMODITY, SERVICE.

Expeditious service is an element of weight bearing upon value of service. *Eagle-Ottawa Leather Co. v. Goodrich Transit Co.*, 101 (105).

Value of service to a shipper is, of course, one of the recognized factors for consideration. *Assoc. Jobbers & Mfrs. v. American-Hawaiian S. S. Co.*, 198 (207).

Value of service is, of course, one of the elements the Board must consider in any rate proceeding. *Atlantic Refining Co. v. Ellerman & Bucknall S. S. Co.*, 242 (252).

Complainant may be correct in contending that the value of the service to the shipper at New York is greater than to the shipper at Philadelphia, but, in this instance, it is due largely to the fact that New York is the first port of call. *Philadelphia Ocean Traffic Bureau v. Export S. S. Corp.*, 538 (542).

Even though the study were unusually comprehensive and exact, the cost developed thereby, though entitled to considerable weight, could not be accepted as controlling since due consideration must also be given to the value of the service to the shipper. *Gulf Westbound Intercoastal Soya Bean Oil Meal Rates*, 554 (560).

The value of the service to the shipper in a general sense is the ability to reach a market at a profit. *Id.* (560).

As a general rule, a maximum reasonable rate should, in principle, be no lower than the cost of service to the carrier plus a reasonable profit and no higher than the reasonable worth of the service to the shipper. *Id.* (560).

The comparisons, unsupported by evidence of value of commodities, value of service, volume of movement, and other factors commonly considered in determining maximum reasonable rates, are of little probative force. *Gulf Intercoastal Rates To and From San Diego (No. 2)*, 600 (604).

The value of the service to the shipper, in a general sense, is the ability to reach a market at a profit. Where, as in the industry concerned, *f. a. s.* prices are less than the cost of production, it is obvious that the failure to market at a profit cannot be attributed to the cost of transportation. The present rate has permitted a steadily increasing volume of lumber to reach the eastern markets at prices which the industry evidently considers profitable in the sense that they make it possible to liquidate capital investments, which is said to be preferable to shutting down operations entirely. *Eastbound Intercoastal Lumber*, 608 (620).

It is only in measuring value of service that consideration may be given to the competition that protestants meet in the eastern markets with lumber

VALUE OF SERVICE—Continued.

from Canada, Russia, the South, and elsewhere because the Commission has no authority to reduce a rate primarily to protect an industry from foreign or domestic competition. *Id.* (620-621).

It is true that the active market competition from other lumber-producing regions has a limiting effect upon the value of the service to protestants. Furthermore, the availability of relatively cheap rail transportation and water transportation at lower charter rates tends to lessen the worth of respondents' services. Just what weight should be given to these factors is difficult to determine. *Id.* (621).

Direct service, especially when more frequent and faster than transshipment service, ordinarily increases the value of the service to the shipper. *Commonwealth of Mass. v. Colombian SS. Co.*, 711 (715).

VERIFICATION OF COMPLAINTS. *See* REPARATION; SHIPPING ACT, 1916.

VOLUME OF TRAFFIC.

The record does not disclose any justification for requiring the carriers to reduce the minimum amount of tonnage for which a ship will move to a private dock below the present minimum of 25 tons. *Alaskan Rate Investigation*, 1 (10).

Manifestly, it costs more to handle several small shipments, issue separate shipping receipts, make separate waybills and expense bills, and separate entries in accounts than it costs to handle one large shipment of the same commodity shipped by one consignor to one consignee. *Id.* (10).

It appears that, if the 25-ton minimum for which a ship will move to a private dock were reduced, the ships would be seriously delayed by calling at various landing places for small shipments, necessitating more circuitous routes of travel and resulting in decreased efficiency of operation. *Id.* (11).

The large and regular movement of wool by the carrier from Boston to Philadelphia is of importance in a consideration of the reasonableness of the rates proposed over those now in effect. *Wool Rates From Boston to Philadelphia*, 20 (23).

The volume of movement or any other single factor should not dominate other factors necessarily entering into a determination of what is a reasonable rate to be applied for the transportation of a particular commodity. *Boston Wool Trade Assoc. v. M. & M. T.*, 24 (27).

Volume of movement is an important consideration in connection with commodity rates. *Trumbull-Vanderpoel Elec. Mfg. Co. v. Luckenbach SS. Co.*, 126 (128).

Volume of Traffic is undeniably a prime factor in constructing water-transportation rates. *Everett Chamber of Commerce v. Luckenbach SS. Co.*, 149 (152).

Contention that ports are subjected to undue and unreasonable disadvantage when vessels discharge direct is not persuasive in view of infrequency of direct discharge and negligible amount of cargo so delivered. *Id.* (152).

Contention that arbitrariness on cargo transshipped subject ports to undue and unreasonable disadvantage is not supported, in view of slight amount of such cargo and practical competitive conditions which carriers have to meet in order to participate in carriage of the traffic. *Id.* (152-153).

Carriers are permitted under the rule to call and accept freight in any quantity from one shipper or supplier at docks located within conference terminal ports other than the declared docks listed in clause "L" of the rule. The same rates apply from the undeclared as from the de-

VOLUME OF TRAFFIC—Continued.

clared docks, but from the undeclared docks charges are assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. On any additional cargo taken for another shipper or supplier from the same undeclared dock in quantities less than the specified minimum, an additional \$1 per revenue ton is charged. In the northern district, by exception, carriers are permitted to load at such undeclared docks or make divisional rate arrangements on quantities less than the specified minima, provided an additional charge of \$1.50 per revenue ton over the tariff rate is assessed. These provisions of the rule open the door to discrimination; furthermore, on the face of it, there is no justification for the extra charge of \$1 on additional shipments taken at the same undeclared dock since freight charges based on the specified minima are evidently considered sufficient to compensate respondents for the call. *Oakland Chamber of Commerce v. American Mail Line*, 314 (317).

Although the carriers under the rule may call direct at nonterminal ports for freight in any quantity from one shipper or supplier, it is provided that such cargo must be assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. No such restriction, however, is placed on cargo moving from non-terminal ports under the divisional rate agreements permitted under the rule to meet the competition of direct calls by conference members. Vessels handling cargo by direct call at nonterminal ports from one shipper or supplier, subject to the minimum rate requirement set forth above, "are permitted to accept any other additional cargo offering from the same dock in any quantity on the same terms, conditions and rates provided in (e) (1)." This provision of the rule is not free from ambiguity. It will be noted that while acceptance of additional cargo is permitted, the words "same terms, conditions and rates" may mean that, for example, a shipper or supplier other than the shipper or supplier of the first lot if offering 50 tons is assessed freight charges on the basis of 500 tons. What has been stated in respect of the \$1 extra on additional cargo from docks within conference terminal ports other than declared docks applies here with equal force. *Id.* (317-318).

It will be noted that, under paragraph 1 of the form of agreement, Calmar reserves the right to fix the maximum quantity to be carried on any of its vessels and that, under paragraphs 3 and 6 thereof, the shipper obligates itself to tender a certain minimum number of carloads or tons. In these respects, the contracting shippers are placed at a disadvantage as compared with noncontracting shippers, for it is the right of shippers to ship in any quantity they choose and the obligation of carriers to carry the quantity tendered to them, due regard being had for the proper loading of the vessel and the available tonnage, and such matter cannot be the subject of contracts. *Intercoastal Investigation, 1935*, 400 (454-455).

From an exhibit introduced by respondent it appears that no intercoastal shipments moved under the rates involved between March 9 and April 8, 1935, and that shipments moving thereunder between the last-mentioned date and June 8, 1935, aggregated only 219 tons. But the persuasive force of this exhibit is greatly lessened by the fact that McCormick Steamship Co. asked interested shippers not to use its line, it having announced its intention to cancel its rates with Berkeley Transportation Co. *Intercoastal Rates To and From Berkeley*, 510 (512).

VOLUME OF TRAFFIC—Continued.

The comparisons, unsupported by evidence of value of commodities, value of service, volume of movement, and other factors commonly considered in determining maximum reasonable rates, are of little probative force. *Intercoastal Rates To and From San Diego* (No. 2), 600 (604).

With respect to the element of low volume of tonnage available at San Diego, relied upon strongly by defendants, it would appear that the presence of the arbitrary has been an influential factor in discouraging the flow of traffic therefrom and that the establishment of a minimum of 500 tons applicable to San Diego cargo would assure sufficient volume to warrant the removal of the arbitrary. Defendants acknowledge that 500 tons is a reasonable quantity for which to shift a vessel, and complainants have no objection to the observance of that minimum. However, such a minimum should be based on the volume of all cargo offered. It should not be restricted to apply to one shipper or to one item of cargo. *San Diego Harbor Commission v. American Mail Line*, 661 (669).

VOLUNTARY RATES. *See* REASONABLENESS.WAIVER OF REGULATIONS AND STATUTORY PROVISIONS. *See also* SHIPPING ACT, 1916.

The requirement of prior notice as regards publication of reductions in rates appears for the first time in the *Intercoastal Shipping Act, 1933*. Prior to that act, no obligation rested upon carriers to give public notice of such reductions. The law only required the filing of maximum rates, fares, and charges and prohibited carriers from demanding, charging, or collecting a greater compensation except with the approval of the Board and with 10 days' public notice, which requirement the Board had the power to waive for good cause shown. *Intercoastal Investigation, 1935*, 400 (444).

It is hardly necessary to state that the provisions of the *Intercoastal Shipping Act, 1933*, and those provisions of the *Shipping Act, 1916*, governing common carriers by water in intercoastal commerce also apply to contract carriers in intercoastal commerce. Such provisions of law the Department may not waive. *Id.* (458).

In procuring terminal facilities, carriers should make proper arrangements to safeguard the obligations imposed upon them by law. Such obligations the Department does not have the power to waive. *Id.* (465).

The right of a governmental body to waive its rules and regulations differs materially from the right to waive provisions of an act conferring upon it jurisdiction of the subject matter. This distinction is clearly outlined by the court when it says: "The line of division must be kept a sharp one between the function of a statute requiring the presentation of a claim within a given period of time, and the function of a regulation making provision as to form. The function of the statute, like that of limitations generally, is to give protection against stale demands. The function of the regulation is to facilitate research." This holding was reaffirmed in *U. S. v. Garbutt Oil Co.*, 302 U. S. 528. *Reliance Motor Car Co. v. G. L. T. Co.*, 794 (795).

Section 22 clearly requires that a complaint be sworn to when filed, and the Commission has no power to waive this requirement. *Id.* (796).

Complainants urge that the second and third sentences of the rule constituted authority by administrative sanction of a 6-month period in addition to the 2-year period specified by the statute and that, due to these sentences, those of the informal complaints which were verified and filed as

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formal complaints within such 6-month additional period are to be considered as complying with the statute. Even though complainants' interpretation of the sentences referred to be accepted as correct, it is clear that any such extension was unauthorized and void. The Shipping Board manifestly had no authority to enlarge its statutory jurisdiction by adoption of a rule of the meaning contended for by complainants. *Id.* (796-797).

WAR, RATE. See COMPETITION.

WAR TAX.

War tax on shipments is not a transportation charge. It is levied upon the transportation charge as such, and section 501 of the Federal revenue act specifically provides that it "shall be paid by the person paying for the services or facilities rendered." *Boston Wool Trade Assoc. v. General SS. Corp.*, 49 (52).

WASTEFUL PRACTICES. See ABSORPTIONS.

WEIGHT-OR-MEASUREMENT.

The record does not justify a conclusion or decision that the practice of assessing freight charges on the weight-or-measurement basis is unjust or unreasonable or that the application of an exclusive weight basis, even if practicable on the Alaskan routes, would be more equitable or satisfactory to shippers generally. *Alaskan Rate Investigation*, 1 (10, 12).

The widely established practice of water carriers in charging for transportation of bulky articles upon measurement rather than upon weight basis is set forth by respondent. *Dobler & Mudge v. Panama R. R. SS. Line*, 130 (131).

The manner of expressing rate is not seen to have affected the reasonableness thereof. *Isaac S. Heller v. Eastern SS. Lines*, 158 (160).

The usual basis of rate publication in steamship operation is an amount per cubic foot or per 100 pounds, whichever produces the higher revenue to the carrier. *Ames Harris Neville Co. v. American-Hawaiian SS. Co.*, 765 (768).

WHARFAGE. See also ABSORPTIONS.

No limit is placed upon the amount of car unloading at Philadelphia, or top wharfage or car unloading at Baltimore or on-carrying charges on shipments destined to Stockton or Sacramento absorbed by respondent. Whether respondent calls direct or not at Oakland, Calif., it there absorbs terminal charges in the amount of 50 cents per ton and, if it elects to make delivery by barge at such place, it absorbs the cost thereof without specifying such amount. Such rules are not in consonance with law. *Intercoastal Investigation*, 1935, 400 (419).

General testimony to the effect that wharfage charges are a burden on foreign commerce is not proof of their unlawfulness. *Philadelphia Ocean Traffic Bureau v. Philadelphia Piers*, 701 (704).

Pier usage and handling charges at Hampton Roads, and regulations and practices in connection therewith, not shown to be unduly prejudicial, and regulations and practices not shown to be unreasonable. *Buxton Lines v. Norfolk Tidewater Terminals*, 705 (710).

