

Decision No. 18160

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of)
F.W.Gomph, as Agent, for an Order)
Authorizing Amendment of Item Relating)
to Dunnage in Pacific Freight Tariff)
Bureau Exception Sheet l-K and corres-)
ponding Items of member lines' Terminal)
Tariffs not governed by said Exception)
Sheet.)

APPLICATION NO. 13479

- A.L.Whittle, H.W.Klein, and Berne Levy, for Applicants.
- A.S.Titus, for California White and Sugar Pine Manufacturers Association, Protestant.
- A.Larsson, for California Redwood Association; California Pine Box Distributors, and Larsson Traffic Service, Protestants.
- C.S.Connolly, for Albers Bros. Milling Company.

BY THE COMMISSION:

O P I N I O N

This is an application filed by F. W. Gomph, as agent for and on behalf of Pacific Freight Tariff Bureau, Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, San Diego & Arizona Railway Company, Northwestern Pacific Railroad Company, Western Pacific Railroad Company, Sacramento Northern Railway, San Francisco-Sacramento Railroad Company and Sunset Railway Company seeking authority under Section 63 of the Public Utilities Act to amend the rules governing dunnage allowance as provided in

Rule 55 of Pacific Freight Tariff Bureau Exception Sheet 1-K, C.R.C.384, also Item 970-A of Southern Pacific Terminal Tariff 230-I, C.R.C.2826 and the corresponding items in the individual tariffs of the other applicants.

Interested shippers and consignees were notified of the proposed amendment to the rules in question and a public hearing was held March 7, 1927 before Examiner Geary. There were no witnesses in opposition to the proposed changes and the matter having been duly heard and submitted is now ready for our opinion and order.

Item 970-A of Southern Pacific Terminal Tariff 230-I, C.R.C.2826, which item is representative of the dunnage rules in question, provides to the effect that when the Southern Pacific Company receives the line haul from point of origin of a carload shipment it will furnish or will pay shipper the actual cost of dunnage, but not to exceed \$2.50 per car under the following conditions:

- "(a)- When two separate carload shipments are loaded in one car; or,
- (b)- When the total weight of freight forwarded by one consignor on one day to one destination equals or exceeds double the minimum carload weight and is loaded into a less number of cars than necessary to obtain the same rate and charges that would obtain if loaded into a greater number of cars; or
- (c)- When the total weight of a single carload shipment is less than double the minimum carload weight and the transportation charge is based on the carload rate and double the minimum carload weight."

Rule 55 of Pacific Freight Tariff Bureau Exception Sheet 1-K and items of other carriers' tariffs provide to the same effect as does Item 970-A previously referred to, except the rule in Pacific Freight Tariff Bureau Exception Sheet 1-K

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is limited in its application to shipments of wine and brandy;

It is proposed to amend the aforementioned tariff rules to provide as follows:

"DUNNAGE

"This company, when it receives a line haul direct from point of origin, or from interchange track with connecting line at point of origin, on shipments (except Perishable Freight, see note), in closed or stock cars, will furnish without charge additional dunnage necessary to load in one car.

- (a) Two separate carload shipments.
- (b) A single carload shipment weighing double the minimum carload weight or more.
- (c) A single carload shipment weighing less than double the minimum weight when the transportation charge is based on carload rate and double the minimum carload weight.

or will pay shipper for same on basis of actual cost but not to exceed \$2.50 per car and weight of the additional dunnage used will be added to tare weight of the car.

Shipper must specify on shipping order the weight of the additional dunnage used, otherwise no allowance will be made.

The provisions of this item will not apply except where double minimum carload charge or more is assessed.

NOTE: Perishable Protective Tariff No. 2 will apply on dunnage necessary to load perishable freight."

The present rule was first published in the year 1914 to encourage the loading of two carloads of freight in one car, thus conserving car equipment and it is substantially similar to rules in effect in prior years. In its present construction it does not clearly express the purpose for which established, for if the total shipments of one consignor for one day equalled or exceeded double the minimum carload weights and were loaded in a

less number of cars than required if shipped as separate carloads, then allowance for dunnage is claimed. As illustrative: If all the shipments made by one consignor on one day weighed 210,000 pounds, were loaded into six cars, and moved under rates subject to minimum carload weight of 30,000 pounds, it is contended by certain consignors that the shipments having moved in less than seven cars allowance for cost of dunnage not to exceed \$2.50 per car should be made.

It is obvious this is not the purpose of the rules and it is to correct this situation and clarify the tariff so that the same will express the intention of the publishers and effect the purpose for which the rules were established that the instant application was filed.

In Case No. 573, April 12, 1913, 2 C.R.C. 607-609,
Commissioner Eshleman said:

"Tariffs should be clear and unambiguous, and when there is an ambiguity by reason of which a shipper has suffered, the carrier being responsible for the ambiguity should certainly be required to sustain the loss, but where, as here, the shipper shows no loss whatsoever and the construction sought is contrary to the plain intent of the tariff, I think such shipper should have no standing before this Commission."

The same principle holds good in this proceeding.

After full consideration of all the facts of record we are of the opinion and find that the proposed amendment is justified and reasonable and applicants should be authorized to publish the proposed rules.

O R D E R

This application having been duly heard and submitted, full investigation of the matters and things involved having been had and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order, which said opinion is hereby referred to and by reference made a part hereof,

IT IS HEREBY ORDERED that applicants, F.W.Gomph, Agent Pacific Freight Tariff Bureau, Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company, San Diego & Arizona Railway Company, Northwestern Pacific Railroad Company, Pacific Electric Railway Company, Western Pacific Railroad Company, Sacramento Northern Railway, San Francisco-Sacramento Railroad Company and Sunset Railway Company, be and they are hereby authorized to amend Rule 55 of Pacific Freight Tariff Bureau Exception Sheet 1-K, C.R.C.384; also Item 970-A of Southern Pacific Terminal Tariff 230-I, C.R.C.2826, and corresponding items of other applicants' Tariffs, as set forth in the application.

Dated at San Francisco, California, this 4th
day of April, 1927.

Emmerts

H.P. Sandige

Chapman

Thos. J. Powell

Commissioners.