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Decision No. 19731

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA WAREHOUSEMEN'S ASSOCIATION,
Complainant,

vs.

CHARLES F. KANE, doing business under
the fictitious name of CHARLES F. KANE
& CO.,
Defendant.

ORIGINAL

) Case No. 2376

In the Matter of the Investigation on
the Commission's own motion, into the
practices, rates, rules, regulations and
operations of CHARLES F. KANE, engaged
in the business of conducting public
utility warehouses for the storage and
handling of automobiles and certain auto-
mobile accessories, under the fictitious
name and style of CHARLES F. KANE & CO.

) Case No. 2452

Devlin & Brookman, by Douglas Brookman,
for Complainant.

Young & Hudson, by R. C. Hudson, for
Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is a voluntary association composed of the owners and operators of approximately 80 warehouses in California, and its complaint alleges, in effect, that the charges assessed and collected by defendant from one F. B. Mansfield for the unloading, storage and handling of six Gardner passenger automobiles during the period extending from May 16, 1927 to May 25, 1927, inclusive, were less than those set forth in defendant's Tariff C.R.C. No. 2, lawfully on file with this Commission. It is further alleged on information and belief that defendant has been

in the past, and is now, unlawfully and unjustly discriminating against certain dealers and firms and unduly and unlawfully extending a preference to other dealers and firms in violation of the Constitution of this State and the provisions of the Public Utilities Act, and that the alleged unlawful acts of defendant have injured the stability and business of, and are prejudicial to, warehouses in competition with defendant.

The answer of defendant admits that the unloading and storage charges assessed on the said automobiles during the period, May 16th to May 25th, inclusive, were lower than the rates lawfully on file with the Commission in Tariff CRC. No. 2, but denies that the handling charges were unlawfully assessed. He further denies that the charges assessed have created any unlawful discrimination, preference or prejudice.

A public hearing in Case No. 2376 was held before Examiner Geary at San Francisco September 30, 1927, and from the facts there developed the Commission instituted an investigation on its own motion into the practices, rates, rules, regulations and operations of defendant (Case No. 2432).

The issues in both proceedings being similar, Cases 2376 and 2452 were heard jointly on January 5th and 20th, 1928, and submitted on the latter date. Both proceedings will be disposed of in this decision. Defendant and respondent being the same, will be hereafter referred to as defendant.

Subsequent to our order in Case No. 2452 instituting the general investigation, a representative of the Department of Finance and Accounts of the Commission was instructed to make a detailed check of the charges assessed and collected

by defendant from all automobile firms and dealers for the handling and storage of automobiles during the period extending from January 1, 1927, to June 30, 1927. This report was made and at the hearing held January 5, 1928, was introduced in evidence as Exhibit No. 6.

Defendant's warehouse is located at 925 Krannan Street, San Francisco. His public utility business, as shown by the tariffs lawfully on file with this Commission, is devoted exclusively to the storage and handling of automobiles and motor trucks. From January first to May 28th, 1927, both dates inclusive, the lawfully applicable charges for handling and storage of automobiles and trucks and the rules and regulations appertaining thereto were published in Tariff CRC No. 2. Subsequent to the latter date the lawfully applicable tariff was CRC No. 3, this issue having superseded CRC No. 2, effective May 29, 1927.

From January 1, 1927, to May 28, 1927, both dates inclusive, the following charges were lawfully applicable in Tariff CRC No. 2:

Unloading:

Passenger Automobiles:

Wheel base 127 inches or less ---- \$1.25 per car
 Wheel base over 127 inches ---- 1.75 " "

Trucks and Delivery Wagons:

Capacity one ton or less ---- \$1.75 per car
 Capacity over one ton ---- 2.75 " "

Storage:

Passenger Automobiles:

	<u>15 Days or Less</u>	<u>Over 15 Days but Not Over 30 Days</u>
Wheel base 120 inches or less	\$1.75 per car	\$3.25 per car
Wheel base over 120 inches	2.75 " "	4.75 " "

(Storage Cont'd)

Trucks and Delivery Wagons:

	<u>15 Days or Less</u>	<u>Over 15 Days but Not over 30 days</u>
Capacity 1 ton or less -----	\$2.75 per car	\$4.75 per car
Capacity over 1 ton -----		
but not over 2 tons -----	3.25 " "	5.75 " "
Capacity over 2 tons -----		
but not over 3½ tons -----	3.75 " "	7.25 " "
Capacity over 3½ tons -----	5.75 " "	8.75 " "

Subsequent to May 28, 1927, the following charges under
Tariff CRC No. 3 prevailed:

Unloading:

Passenger Automobiles
regardless of size ----- \$1.25 per car

Trucks and Delivery Wagons:

Capacity 2 tons or less ----- 1.75 " "

Capacity over 2 tons ----- 2.75 " "

15 Days
of Less

Over 15
Days but
Not over
30 days

Storage:

Passenger Automobiles
regardless of size ----- \$1.75 per car \$3.25 per car

Trucks and Delivery Wagons

Capacity 1 ton or less ----- 2.75 per car 4.75 per car

Capacity over 1 ton but
not over 2 tons ----- 3.25 " "

Capacity over 2 tons but
not over 3½ tons ----- 3.75 " "

Capacity over 3½ tons ----- 5.75 " "

The Commission's Exhibit No. 6 heretofore referred to,
and from which we hereby find the following facts to be true, shows
that during the period extending from January 1, 1927, to May
28, 1927, inclusive, defendant assessed and collected charges less
than the lawfully applicable charges shown in Tariff CRC No. 2
from the following firms and dealers: Del Tredici and Son, under-
charged \$5.00 for unloading ten Hudson passenger automobiles
having a wheel base of 127-3/8 inches; Locomobile Company of
America, undercharged \$1.00 for unloading two Locomobile passenger

automobiles having a wheel base of 142 inches; F. B. Mansfield, undercharged 50 cents for unloading one Gardner passenger automobile having a wheel base of 130 inches; Western Motors Company, undercharged \$6.00 for unloading 12 Pontiac delivery trucks having a capacity of one-half ton each, and undercharged \$11.00 for storing eight trucks of the same make and capacity; Don Lee, Inc. undercharged \$9.50 for storing 9 LaSalle passenger automobiles having wheel bases of 125 or 134 inches; General Motors Truck Company, undercharged \$56.00 for storing 12 G.M.C. trucks having capacities ranging from 2½ tons to 5 tons; F. B. Mansfield, undercharged \$3.00 for storing 3 Gardner passenger automobiles having wheel bases of 122 and 130 inches; and Robert A. Smith, Inc., undercharged \$18.00 for storing 10 Chevrolet delivery trucks having capacities of one-half or one ton.

Exhibit No. 6 also shows that from May 29, to June 30, 1927, the following firms were either charged a lesser or greater amount than the lawful charges shown in Tariff CRC No. 3; Don Lee, Inc., overcharged \$6.00 for unloading 12 Cadillac passenger automobiles, and \$18.50 for storing 15 Cadillac passenger automobiles, all having wheel bases of 132 or 138 inches; Pierce-Arrow Pacific Sales Company, overcharged \$11.00 for unloading 22 Pierce-Arrow passenger cars having wheel bases of 130 or 138 inches; Rolls-Royce of America, overcharged \$1.50 for unloading 3 Rolls-Royce passenger cars; Western Motors Company, undercharged \$1.50 for unloading 3 Pontiac delivery trucks having a capacity of one-half ton each; General Motors Truck Company, overcharged \$7.50 for storing 15 G.M.C. trucks and undercharged \$1.00 for storing 2 trucks of the same make, having capacities of from 1 ton to 2½ tons; Western Motors Company, undercharged \$6.50 for storing 3 Pontiac delivery trucks having a capacity of one-half ton each, and Howard Automobile Company, undercharged \$316.50 for storing 1266 Buick passenger automobiles having wheel bases of 115, 120 or 128 inches. In connection with the

Howard Automobile Company, defendant frankly admitted that he had not assessed and collected the lawful rates on file, and that because he believed that the Howard Automobile Company was entitled to a preferential rate or rates, he had always given same to it.

Following the hearing held on January 5, 1928, a Commission representative and a representative of defendant together rechecked the details contained in Commission's Exhibit No. 6, and at the last hearing it was stipulated that the figures and data contained therein were correct.

From the foregoing it is seen that defendant has committed numerous flagrant violations of the Public Utilities Act which we cannot overlook. There are about twenty of these violations which are not now barred by the statute of limitations that appear to us to have been committed willfully, deliberately and knowingly in violation of Section 17(b) of the Public Utilities Act and without justification or excuse, whatever. We believe that defendant should be penalized for these offenses as a means of punishment and to warn him that future violations of the act will not be countenanced by us.

The Attorney for the Commission will be instructed and directed to bring an action in the name of the People of the State of California in the Superior Court of the State of California in and for the City and County of San Francisco for the recovery of penalties for the twenty violations above referred to, which are:

1. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to August 12, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Howard Automobile Company the sum of \$1,467.00 as payment for the storing for said Howard Automobile Company of 667 Buick passenger automobiles, resulting in a charge in the aggregate of at least \$166.75 less than that lawfully applicable under the provisions of defendant's Tariff CRC No. 3, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

2. For charging, demanding, collecting, and/or receiving during the period from May 29th, 1927, to November 5, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Don Lee, Inc., the sum of \$21.00 as payment for the unloading for said Don Lee, Inc., of 12 Cadillac passenger automobiles, resulting in a charge in the aggregate of \$6.00 greater than that lawfully applicable under the provisions of defendant's Tariff CRC No. 3, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

3. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to July 25, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Don Lee, Inc., the sum of \$17.25 as payment for the storage for said Don Lee, Inc., of 9 La Salle passenger automobiles, resulting in a charge in the aggregate of \$9.50 less than that lawfully applicable under the provisions of defendant's Tariff CRC No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

4. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 11, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Del Tredici and Son the sum of \$5.00, as payment for the unloading for said Del Tredici and Son of 4 Hudson automobiles, resulting in a charge in the aggregate of \$2.00 less than that lawfully applicable under the provisions of defendant's Tariff No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

5. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to July 23, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Locomobile Company of California the sum of \$2.50 as payment for the unloading for said Locomobile Company of 2 Locomobile passenger automobiles, resulting in a charge in the aggregate of \$1.00 less than that lawfully applicable under the provisions of defendant's Tariff CRC No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

6. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 27, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from F. B. Mansfield the sum of \$1.25 as payment for the unloading for said F. B. Mansfield of 1 Gardner passenger automobile, resulting in a charge in the aggregate of 50 cents less than that lawfully applicable under the provisions of defendant's Tariff CRC No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

7. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 27, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from F. B. Mansfield the sum of \$5.25 as payment for the storing for said F. B. Mansfield of 3 Gardner passenger automobiles, resulting in a charge in the aggregate of \$3.00 less than that lawfully applicable under the provisions of defendant's Tariff CRC No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

8. For charging, demanding, collecting, and/or receiving during the period from May 28th, 1927, to June 16, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Pierce-Arrow Pacific Sales Company the sum of \$5.25 as payment for the unloading for said Pierce-Arrow Pacific Sales Company of 3 Pierce-Arrow passenger automobiles, resulting in a charge in the aggregate of \$1.50 greater than that lawfully applicable under the provisions of defendant's Tariff CRC No. 3, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

9. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to June 20, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Pierce-Arrow Pacific Sales Company the sum of \$5.25 as payment for the unloading for said Pierce-Arrow Pacific Sales Company of 3 Pierce-Arrow passenger automobiles, resulting in a charge in the aggregate of \$1.50 greater than that lawfully applicable under the provisions of defendant's Tariff CRC No. 3, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

10. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927 to June 30, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Pierce-Arrow Pacific Sales Company the sum of \$3.50 for the unloading for said Pierce-Arrow Pacific Sales Company of 2 Pierce-Arrow passenger automobiles, resulting in a charge in the aggregate of \$1.00 greater than that lawfully applicable under the provisions of defendant's Tariff CRC No. 3, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

11. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to June 30, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Pierce-Arrow Pacific Sales Company the sum of \$5.25 as payment for the unloading for said Pierce-Arrow Pacific Sales Company of 3 Pierce-Arrow passenger automobiles, resulting in a charge in the aggregate of \$1.50 greater than that lawfully applicable under the provisions of defendant's Tariff CRC No. 3, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

12. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927 to July 23, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Pierce-Arrow Pacific Sales Company the sum of \$5.25 as payment for the unloading for said Pierce-Arrow Pacific Sales Company of 3 Pierce-Arrow passenger automobiles, resulting in a charge in the aggregate of \$1.50 greater than that lawfully applicable under the provisions of defendant's Tariff CRC No. 3, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

13. For charging, demanding, collecting, and/or receiving during the period from May 29th, 1927, to July 15, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from General Motors Truck Company the sum of \$48.75 as payment for the storing for said General Motors Truck Company of 15 G.M.C. trucks, resulting in a charge in the aggregate of \$7.50 greater than that lawfully applicable under the provisions of defendant's Tariff CRC No. 3, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

14. For charging, demanding, collecting, and/or receiving during the period from May 29, 1927, to August 18, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Rolls Royce of America the sum of \$5.25 as payment for the unloading for said Rolls Royce of America of 3 Rolls Royce passenger automobiles, resulting in a charge in the aggregate of \$1.50 greater than that lawfully applicable under the provisions of defendant's Tariff CRC No. 3, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

15. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 14, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Western Motors Company the sum of \$6.50 as payment for the storing for said Western Motors Company of 2 Pontiac delivery trucks, resulting in a charge in the aggregate of \$3.00 less than that lawfully applicable under the provisions of defendant's Tariff CRC No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

16. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927 to May 23, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Western Motors Company the sum of \$3.25 as payment for the storing for said Western Motors Company of 1 Pontiac delivery truck, resulting in a charge in the aggregate of \$1.50 less than that lawfully applicable under the provisions of defendant's Tariff CRC No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

17. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 21, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Western Motors Company the sum of \$6.50 as payment for the storing for said Western Motors Company of 2 Pontiac automobile delivery trucks, resulting in a charge in the aggregate of \$3.00 less than that lawfully applicable under the provisions of defendant's Tariff No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

18. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 14, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Western Motors Company the sum of \$2.50 as payment for the unloading for said Western Motors Company of 2 Pontiac delivery trucks, resulting in a charge in the aggregate of \$1.00 less than that lawfully applicable under the provisions of defendant's Tariff CRC No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

19. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 21, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Western Motors Company the sum of \$2.50 as payment for the unloading for said Western Motors Company of 2 Pontiac delivery trucks, resulting in a charge in the aggregate of \$1.00 less than that lawfully applicable under the provisions of defendant's Tariff CRC No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

20. For charging, demanding, collecting, and/or receiving during the period from January 1, 1927, to May 23, 1927, both dates inclusive, in the City and County of San Francisco, State of California, from Western Motors Company the sum of \$1.25 as payment for the unloading for said Western Motors Company of one Pontiac delivery truck, resulting in a charge in the aggregate of 50 cents less than that lawfully applicable under the provisions of defendant's Tariff CRC No. 2, the only lawful and effective Tariff applicable for such service in violation of Section 17(b) of the Public Utilities Act (Stats. 1915, Ch. 91, p. 115, as amended).

Defendant should be ordered to immediately cease and desist from charging, demanding, collecting, and/or receiving any charges for the unloading and storage of automobiles, automobile trucks or delivery trucks, and other commodities greater or less or different than those shown in his Tariff CRC No. 3 now lawfully on file with this Commission.

An order in conformity with the above will be entered.

O R D E R

The cases as above numbered and entitled having been duly heard and submitted, the Commission now being fully advised, and basing the following order on the findings of fact and conclusions contained in the opinion preceding this order,

NOW, THEREFORE, IT IS HEREBY ORDERED that Charles F. Kane, doing business under the fictitious name and style of Charles F. Kane & Co., be, and he is hereby ordered to immediately cease and desist, and thereafter to abstain from charging, demanding, collecting or receiving any charges for the unloading and storage of automobiles, automobile trucks or delivery trucks, and other commodities greater or less or different than those shown in his Tariff CRC No. 3, now lawfully on file with this Commission.

IT IS HEREBY FURTHER ORDERED that the Attorney for this Commission be, and he is hereby directed to commence an action in the name of the People of the State of California, in the Superior Court of the State of California, in and for the City

and County of San Francisco, for the recovery of penalties for the twenty violations set forth in the Opinion Preceding this Order.

For all other purposes the effective date of this Order shall be five (5) days from the date hereof.

Dated at San Francisco, California, this 8th day of May, 1928.

Leon A. Hill
D. J. [unclear]
James [unclear]
Thos. [unclear]
W. J. [unclear]
Commissioners