

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
F. W. GOMPH, AGENT, Pacific Freight)
Tariff Bureau for order authorizing) Application No. 14985
cancellation of Rule 135 of Excep-)
tion Sheet No. 1-L, C.R.C. No. 403.)

- Platt Kent and H. E. McElroy, for the members of the Pacific Freight Tariff Bureau and F. W. Gomph.
Seth Mann, for the San Francisco Chamber of Commerce.
W. O. Banks, for Standard Oil Company of California, Shell Company of California, Union Oil Company of California and the Associated Oil Company.
B. H. Carmichael, for Carmichael Traffic Corporation, General Petroleum Corporation, Gilmore Oil Company, Marine Refining Corporation, Wilshire Oil Company, Enesco Derrick & Equipment Company and D. & B. Pump and Supply Company.
E. W. Hollingsworth, R. T. Boyd and Bishop & Bahler, for the California Manufacturers Association, Edward R. Bacon Company, California Rex Spray Company, Joshua Hendy Iron Works, Montague Pipe & Steel Company, R. W. Nason & Company, United Commercial Company, Western Pipe & Steel Company, Soule Steel Company, Pacific Coast Steel Company.
E. J. Forman and R. P. McCarthy, for the Globe Grain and Milling Company, and E. J. Forman for the Los Angeles Traffic Managers Conference.
C. E. Connolly, for Albers Bros. Milling Company.
E. D. Smith, for Sperry Flour Company and the Central Manufacturing District Traffic Association of Los Angeles.
T. J. Olliffe, for the Texas Company.
G. J. Olsen, for Dunham, Carrigan & Hayden Company.

BY THE COMMISSION:

O P I N I O N

This is an application filed by F. W. Gomph, Agent Pacific Freight Tariff Bureau, on behalf of all carriers parties to Pacific Freight Tariff Bureau Exception Sheet 1-L, Agent F. W. Gomph's C.R.C. 403 under Section 63 of the Public Utilities Act, for permission to cancel Rule 135 providing one half the outbound rate for return movement of articles damaged

in transit, refused by consignee or returned for repairs. The applicable rates after cancellation will be the full tariff rates in effect for articles not returned.

A public hearing was held at San Francisco October 31, 1928, before Examiner Geary and the case having been duly submitted is now ready for an opinion and order.

The rule sought to be cancelled provides (a) that articles damaged in transit or (b) refused by consignee may be returned to original shipper and to original point of shipment at one half the outbound rate current at time of return movement provided the goods are returned over the same route and line as the original outbound movement within ten days from date of issuance of delivery order for original movement and all charges are prepaid or guaranteed; (c) that agricultural implements, vehicles (non self-propelling), machinery and machines and parts thereof, creamery and cheese factory apparatus and parts thereof and oil well working barrels may be returned to shipper and to point of shipment for repairs when articles are returned within a period of two years from date of original shipment; and (d) that articles referred to in paragraphs (a), (b) and (c) may be returned to an intermediate point when the original shipper maintains a repair shop or branch house at an intermediate point at one half of the outbound rate applicable from such intermediate point.

Applicant contends that the present rule (a) results in discrimination between commodities; (b) prefers a shipper who maintains a repair shop or branch house at an intermediate point and discriminates against a shipper who does not; (c) results in disputes between shippers and carriers; (d) is subject to abuse and cannot be adequately policed; and (e) creates discrimination against interstate traffic.

Protestants, who are users of the returned shipment privilege, claim that the retention of the present rule is necessary, that the reduced rates extend to all shippers under like circumstances and conditions, and that the present rule in no way discriminates against interstate commerce.

It is contended by applicant that the present rule is the cause of controversy between shippers and carriers and that claims are continually being filed by shippers who failed to comply with some requirement of the rule and who in violation of the tariff seek to obtain the reduced rates provided for returned shipments. The most common of these claims results through the failure of a shipper to show on the return billing reference to the original outbound movement. It is further contended that the present rule lends itself to abuse and that to police the shipments in a manner to prevent such abuse is a problem of some difficulty.

Protestants on the other hand take the position it is the duty of the carrier's agent before applying the reduced rates to see that the returned shipments are properly identified, that appropriate notations are contained on the bill of lading and that the tariff rules are fully complied with. It is stated the problem in connection with this particular rule is no different than that with which the carriers are confronted in connection with numerous other rules now contained in their various tariffs.

These matters go principally to the practical operation of the rule sought to be cancelled, and such matters while of importance are not the fundamental issues of the application. The issues are fourfold. The first deals with the return of freight damaged in transit; second, the return of freight refused by consignee; third, return (within a period of two years) of agricultural implements, vehicles (non self-propelling),

machinery and machines and parts thereof, creamery and cheese factory apparatus and parts thereof and oil well working barrels returned for repairs; and fourth, return of freight coming within all of these classifications to intermediate points.

It is claimed by applicant that when a shipment is damaged in transit carriers have arrangements through their claim departments whereby they can either pay the damage or handle the damaged articles back to the point where they can be repaired. Under the system of returning damaged shipments to consignor at reduced rates articles are tendered to the carriers' agent for immediate shipment which it is claimed does not allow the carriers sufficient time to make a proper check of the damage. It would appear that regardless of the method of handling the shipper will ultimately be reimbursed for the freight charges which may be paid for the return of the damaged articles.

Refusal of freight by consignee at destination may be due to a number of causes. It may be because of the defective quality of the article received, to the receipt of the wrong merchandise resulting through an error in shipment, to the lack of adequate storage space, to the shutting down of a plant or industry on short notice, and many other causes. Applicant claims that all of these situations are beyond its control and that if such shipments are returned it should pay full tariff rates.

Applicant contends that the privilege of returning agricultural implements, vehicles (non self-propelling), machinery and machines and parts thereof, creamery and cheese factory apparatus and parts thereof and oil well working barrels for repairs extends to shippers of those particular commodities a privilege not accorded all shippers and that the maintenance of such a provision creates unlawful discrimination. Applicant likewise maintains that the privilege of returning articles to inter-

mediate points when the original shipper maintains a repair shop or branch house at such intermediate point, creates unlawful discrimination against a shipper not maintaining these facilities.

It is apparent from this record that the provisions relating to the return of certain articles for repairs and to the return of freight to an intermediate point at the reduced rates provided by Rule 135 are unduly discriminatory in violation of Section 19 of the Public Utilities Act, and that there is no justification for the maintenance of such preferential arrangements.

One of the contentions of applicant in support of the cancellation of Rule 135 in its entirety is that the present rule creates discrimination against interstate traffic. Applicant states that a rule similar to that now in effect on intrastate traffic was in effect on interstate traffic but was cancelled in order to comply with the views expressed by the Interstate Commerce Commission in their decision "In the Matter of Reduced Rates on Returned Shipments", 19 I.C.C. 409, decided October 10, 1910. A study of the decision referred to develops that while the Interstate Commerce Commission disapproved of returned shipment rates in general they sanctioned the publication of reduced rates for the return of freight refused by consignee at destination. A portion of the decision is quoted below:

"Our conclusion that the character of the shipment is not differentiated in legal contemplation by the fact of prior movement compels us to adhere to the views announced in Section B, paragraph 67, of Tariff Circular 17-A. It will be observed that this ruling is in strict accord with fundamental principle disapproving of returned-shipment rates in general but justifying reduced rates for the return of freight which has been refused by the consignee at destination. In the latter case the return movement is practically a continuation of the going movement, and may for that reason be accorded lower than standard rates." (Underscoring ours)

A perusal of the decision referred to in its entirety

does not support applicant's contention that this decision authorized cancellation on interstate traffic of those portions of the returned-shipment rule relating to the return, at reduced rates, of articles refused by consignee. This fact becomes apparent upon referring to Administrative Ruling No. 51 of Interstate Commerce Commission Tariff Circular No. 20, effective October 1, 1928, which specifically authorizes the publication in interstate traffic of such rates.

Protestants have contrasted the through rates, origin to destination and return to origin, under the returned shipment-privilege with the through rates which would accrue by use of the diversion privilege for an equal distance. It is argued that the round trip movement does not substantially differ in service requirements from that of shipments moving for the same distance in the same general direction. From exhibits introduced by protestants it is shown that the returned-shipment privilege for freight refused by consignee is now in effect in the States of Idaho, Oregon and Utah on the line of the Oregon Short Line Railroad.

Upon a consideration of all the facts of record we are of the opinion and find that the cancellation of the rule has been justified except that portion relating to the return of freight refused by consignee. The rule should be amended to read as follows:-

Articles refused by consignee may be returned to original shippers and to original point of shipment at one-half of the outbound rate current at time of return movement, subject to established minimum charge, only upon the following conditions:

- (a) Goods for return movement properly identified, must be presented to carrier within ten (10) days from date of issuance of Delivery Order for original movement.
- (b) All charges must be prepaid or guaranteed. Waybill covering return movement and shipping receipt must show reference to original outbound shipment and waybill.

- (c) Goods must be returned over the same route and line as the original outbound movement.
- (d) Explosives and Blasting Caps returned to original shipping point under provisions of paragraphs (a), (b) and (c), tendered for return movement under provisions of paragraph (a), but which cannot be accepted until after expiration of 10 days' limit on account of carriers having certain specified days for handling Explosives; such shipments will also be received, and rating protected, on the day assigned for receipt of Explosives next following expiration of the 10 days' time provided in paragraph (a).

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,

IT IS HEREBY ORDERED that the application of F. W. Gompf, Agent, for carriers parties to Pacific Freight Tariff Bureau Exception Sheet 1-L, Agent F. W. Gompf's C.R.C. 403, to cancel Rule 135 of said exception sheet, be and the same is hereby authorized to the extent shown in the opinion which precedes this order.

Dated at San Francisco, California, this 12th day of April, 1929.

Thos D. Lott

Chas. Stearns

Ernest C. Coe

Leon A. Whittell

W. A. Carr
Commissioners.