

ORIGINALDecision No. 25064.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
 on the Commission's own motion into)
 the practices of common carriers)
 parties to F. W. Gomph's Exception) Case No. 3195.
 Sheet No. 1-M, C.R.C. 448, in assess-)
 ing charges on empty carriers return-)
 ed under Items 330-B and 340 of said)
 Exception Sheet.)

James E. Lyons and A. L. Whittle for Southern Pacific Com-
 pany, Central California Traction Company, Northwestern
 Pacific Railroad Company, Visalia Electric Railroad
 Company, Peninsula Railway and Petaluma & Santa Rosa
 Railroad Company, respondents.

G. E. Duffy and E. C. Pierre for The Atchison, Topeka and
 Santa Fe Railway Company and Central California Traction
 Company, respondents.

L. N. Bradshaw and J. P. Haynes, for Western Pacific Rail-
 road Company, Sacramento Northern Railway, and Tidewater
 Southern Railway, respondents.

W. J. Lane, for Guggenlime & Company.

L. R. Keith, for California Packing Corporation.

W. S. Everts, for the Cannery League of California.

WEHRSELL, Commissioner:

O P I N I O N

This is an investigation on the Commission's own motion
 into the practice of carriers parties to F. W. Gomph's Exception
 Sheet No. 1-N, C.R.C. No. 448, in assessing charges under Items
 330-B and 340 of said Exception Sheet for the transportation of
 empty carriers, carloads, returned to original point of shipment
 after having been transported under load via the carrier over
 which the shipment is returned. The investigation was instituted

upon numerous informal complaints alleging that respondents were improperly applying their tariffs.

A public hearing was held at San Francisco March 9, 1932, and the matter submitted.

The issue is solely one of tariff interpretation. In Albers Bros. Milling Company vs. Southern Pacific Company, 34 C. R.C. 899, the Commission interpreted the tariff provisions here at issue in connection with two specific shipments of empty drums, carloads, returning from Sacramento to Oakland after having been transported under load via the line of the Southern Pacific Company from Oakland to Sacramento, and found that the charges assessed on these shipments were inapplicable to the extent they exceeded one half of the fourth class rate subject to a minimum weight of 12,000 pounds. Refund of overcharges amounting to \$10.45 was ordered.

The record in this proceeding leads to the conclusion that the decision in the Albers case was in error. Carriers (used packages), second-hand, empty, returning, carloads, are rated under Item 330 Series of Exception Sheet 1-X, C.R.C. No. 448, at "Class B but not to exceed less carload rate, minimum weight 12,000 pounds, subject to Section 6 of Rule 34 of current Western Classification, or Class E but not to exceed less carload rate, minimum weight 30,000 lbs.:" and under Item 340 Series "Class E but not to exceed less carload rate, minimum weight 12,000 lbs., subject to minimum charge of \$8.00 per car." While under these provisions the less than carload rates may be used as maximum, the tariff cannot be construed as setting aside the minimum scale of class rates, to which the less than carload rates are subject. Under this scale the minimum rate applicable on a less than carload shipment of empty carriers is not less than the fourth class rate of 15 cents.

Upon consideration of the record in this proceeding I am of the opinion that respondents have not improperly applied their tariffs in assessing charges on shipments of empty carriers, carloads, returning, as described. This proceeding therefore should be discontinued.

I recommend the following form of order:

O R D E R

Upon consideration of all the facts of record and good cause appearing therefor,

IT IS HEREBY ORDERED that this proceeding be and it is hereby discontinued.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of August, 1932.

W. A. C. C.
Leon Whittell
M. J. C.
W. B. Harris
Fred G. Alexander
Commissioners.