

Decision No. 25699

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

KOTEX COMPANY,

Complainant,

vs.

CASE NO. 3432

E. S. STANLEY, doing business as
STAR TRUCK & WAREHOUSE COMPANY,

Defendant.

ORIGINAL

R. B. Cassingham, for Kotex Company.

R. E. Wallace, for E. S. Stanley.

CARR, Commissioner.

OPINION

This case is an aftermath of Re Allen Brothers, Inc., et al, Decision No. 25024, dated August 1, 1932, in which the Commission, finding that various warehousemen in Los Angeles and vicinity, including the defendant here, had been departing from their published tariffs, ordered such warehousemen promptly to proceed to collect all under-charges. The complainant is one of the customers of the defendant which has been charged off-tariff rates and which now claims that the tariff rates were unreasonable, to the extent they exceeded the charges actually paid, and asks the Commission to authorize the waiving of the under-charge. The defendant warehouseman admits the allegations of the complaint and joins in the prayer for relief.

A public hearing was held at Los Angeles on February 28, 1933, and the case was submitted.

Generally in cases of this character, while there may be no issue as between the actual parties, it is necessary that the Commission scrutinize most carefully the proofs in support of the complaint, lest by granting the relief sought, it lends its sanction and approval to what in substance and in effect is a rebate. The quantum and character of proof necessary to justify the relief must measure up to that which would be required, had this complainant paid the full tariff charges and then sought reparations upon the ground of unreasonableness and the defendant had opposed the relief sought. And care must be taken to see that a discriminatory situation is not brought about, for attached to this commission's power to grant reparations is the salutary limitation "that no discrimination will result from such reparation" (Sec. 21 Art. XII of Constitution; Sec. 71(a) of Public Utilities Act.)

The facts developed in the record may be summarized briefly as follows:

Complainant stored in defendant's warehouse numerous lots of sanitary napkins in cartons weighing 24 pounds and measuring from $5\frac{1}{2}$ to $5\text{-}3\frac{1}{4}$ cubic feet. Charges based on rates of 5 cents per carton per month for storage and 4 cents for handling were assessed and collected. The rate lawfully applicable was 6 cents for storage, $7\frac{1}{2}$ cents for handling and $\frac{1}{2}$ cent for unloading.

Complainant states that shipments were stored under the misapprehension that the charges originally assessed were applicable and that had it known what the lawful charges were, it would have arranged for private storage. Of nineteen cities throughout the United States in which this same commodity has been stored by complainant in public warehouses, the rate here actually charged is the highest.

No specific rate was published during the period involved to cover the commodity and it was therefore subject to the merchandise N.O.S. rate. Because of its light weight and uniformity of size, however, it is easier to handle than merchandise generally. Furthermore, it moves in large volume, requires little segregation or sorting and has a rapid turnover.

The rates sought result in revenue of 6.6 cents per square foot for storage, which is shown to be above the average produced by commodities generally. The handling charge, likewise, is shown to be in excess of the actual cost of the service. Effective October 1, 1932, the California Warehouse Tariff Bureau in its Tariff No.5-H, C.R.C. No.59, specifically published rates of the volume of those actually charged. Defendant was a party to this tariff.

The record fairly shows that the lawfully applicable charges were unjust and unreasonable to the extent they exceeded those subsequently established, and defendant should be authorized to waive collection of the outstanding undercharges. (San Francisco Milling Co., Ltd., v. Southern Pacific Company, 34 C.R.C. 453.) The following form of order is recommended:

O R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that defendant E. S. Stanley, doing business as STAR TRUCK AND WAREHOUSE COMPANY, be, and he is, hereby ordered to cease and desist from demanding from complainant, KOTEX COMPANY, charges for the storage and handling of lots of sanitary napkins involved in this case in excess of those herein found reasonable.

IT IS FURTHER ORDERED that defendant E. S. STANLEY, doing business as STAR TRUCK AND WAREHOUSE COMPANY, be, and he is, hereby authorized and directed to waive the existing undercharges on complainant's merchandise described in this case.

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 7th day of March, 1933.

[Signature]
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COMMISSIONERS.