

Decision No. 25700

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Canada Dry Ginger Ale, Incorporated,
Complainant,

vs.

Union Terminal Warehouse,
Defendant.

ORIGINAL

Case No. 3451.

Walter Jordan, for complainant.
Richard E. Wedekind, for defendant.
F. M. Mott, for Metropolitan Warehouse Company.

CARR, Commissioner.

O P I N I O N

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 had 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 in effect join 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 petition, 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 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 reparation is the salutary limitation: "that no discrimination will result from such reparation" (Section 21 Article XII of the Constitution; Section 71(a) of the Public Utilities Act).

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

Complainant stored in defendant's warehouse numerous lots of ginger ale in cases measuring $2/3$ cubic foot and weighing $23\frac{1}{2}$ pounds. On them it paid charges at the rate of 1¢ per case per month for storage and $1\frac{1}{2}\text{¢}$ per case for handling. These rates, however, applied on shipments of ginger ale in cartons not exceeding $3/4$ cubic foot or weighing more than 21 pounds. On cases of the size and weight of those stored, the lawfully applicable rates were 2¢ for storage, $2\frac{1}{2}\text{¢}$ for handling and 45¢ per ton for unloading. On 25% of complainant's merchandise the published tariff rates were collected.

Thus while not exceeding the cubic measurement, the storage and handling charges on this merchandise were doubled because its weight exceeded by $2\frac{1}{2}$ pounds the maximum allowed under the tariff. Furthermore had no specific commodity rate been provided, the rate on merchandise N.O.S. (not otherwise-specified), which is the same as that paid by complainant, would have been applicable. Defendant states that it did not intend that the

charges should be doubled because of the additional 2½ pounds, but that through negligence the necessary tariff change was not made at the time the size of the carton was changed. A specific rate of the volume of that sought has since been established in California Warehouse Tariff Bureau Tariff 7-B, C.R.C. No. 57, to which defendant is a party.

Complainant's merchandise is usually stored in large quantities, has a rapid turnover and is in many respects more desirable from a warehousing standpoint than merchandise generally. The rates sought, furthermore, compare favorable with those on sauce in glass which is stored in the same kind of a package but is smaller in volume. It is admitted by defendant that the applicable rate was unreasonable to the extent it exceeded that subsequently established and the record so shows. Defendant should be authorized to waive collection of the outstanding undercharges. (San Francisco Milling Co. Ltd., vs. Southern Pacific Co., 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 the defendant, Union Terminal Warehouse, be, and it is, hereby ordered to cease and desist from demanding from complainant, Canada Dry Ginger Ale, Incorporated, charges for the storage and handling of the lots of ginger ale involved in this case in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendant, Union Terminal Warehouse be, and it is, hereby authorized and directed to waive the existing undercharges on complainant's merchandise involved 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.

C. Leamy
Leon Whitely
W. A. Cunn
W. B. Cunn
M. H. Cunn
COMMISSIONERS.