

Decision No. 25702

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MAIL POUCH TOBACCO,
a company, Complainant,

-vs-

UNION TERMINAL WAREHOUSE,
a corporation, Defendant.

CASE NO. 3460

ORIGINAL

Rex W. Boston, for Complainant.

Richard E. Wedekind, for Defendant.

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 undercharges. 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 asked the Commission to authorize the waiving of the undercharge. The defendant warehouseman admits that the applicable storage and handling charges were unreasonable, but does not admit that charges assessed for marking were in any manner unlawful.

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 between the actual parties as to certain of the charges, 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 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". (Sec.21, Article 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 tobacco on which it paid charges at the rate of $3\frac{1}{2}$ cents per case per month for storage and $4\frac{1}{2}$ cents for handling. No payment was made for the service of marking. The charges applicable under the lawfully filed tariff were $5\frac{1}{2}$ cents for storage, $6\frac{1}{2}$ cents for handling and one cent for marking. Complainant does not contend that the marking charges are in themselves unreasonable, but takes the position that marking was unnecessary and that the charges therefor are for that reason unjustified. The record shows, however, that it was understood by complainant that the cases were being marked; that defendant performed the service over a long period of time, and that at no time did complainant request that it be discontinued.

Complainant's contention that the storage and handling

rates were unreasonable rests upon the grounds that lower rates assumed to have been lawfully established were agreed to in January, 1931, and have since been established and also that the applicable rates are higher than those in effect at Portland and Seattle.

This is a borderline case. In addition to the fact that lower charges were contemporaneously in effect at Portland and Seattle, the record shows that at the time packages of the size here involved were first offered for storage it was agreed that reduced rates should be established; that defendant's predecessor informed the complainant in writing that it would file a supplement to its tariff "to take care of the new rates as well as to protect both yourselves and the warehouse", and that the reduced charges have since been filed by all warehouses in this territory. The foregoing justifies the conclusion that the charges for storage and handling were unreasonable during the period here involved to the extent they exceeded those paid. Defendant should make collection of the outstanding marking charges.

The following form of order is recommended:

ORDER

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that defendant, Union Terminal Warehouse, be and it is hereby ordered to cease and desist from demanding from complainant, Mail Pouch Tobacco, charges for the storage and handling of the lots of tobacco 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 storage and handling undercharges on complainant's merchandise involved in this case.

IT IS HEREBY FURTHER ORDERED that in all other respects this case be and it is hereby dismissed.

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.

W. A. C.
W. B. Lewis
M. A. C.
W. B. Lewis
W. B. Lewis
Commissioners.