

Decision No. 25703

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

A. W. ADAMS, doing business
under the fictitious name and
style of A. W. ADAMS & CO.,

Complainant,

-vs-

D. W. GRIGGS, doing business
under the fictitious name and
style of AMERICAN WAREHOUSE,

Defendant.

THE A. W. ADAMS & CO., ET AL,

Complainants,

-vs-

D. W. GRIGGS, doing business
under the fictitious name and
style of AMERICAN WAREHOUSE,

Defendant.

ORIGINAL

CASE NO. 3398

CASE NO. 3467

LeRoy M. Edwards, by O. C. Sattinger,
for Defendant, D. W. Griggs.

Henry P. Goodwin, for Complainant,
A. W. Adams.

CARR, Commissioner.

O P I N I O N

These cases are 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 complainants are customers of the defendant who have been charged off-tariff rates.

It is now claimed that the tariff rates were unreasonable, to the extent they exceeded the charges actually paid. The Commission is asked to authorize the waiving of the undercharges, except as to A. W. Adams & Co. which has paid the amount of the undercharge and which asks reparation as to the amount so paid. 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 March 1, 1933, and the cases which were consolidated, were 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 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:

The storage and unloading charges were paid on the basis of the rates published in defendant's tariff. Only the labor charge is involved in these cases.

Defendant testified that the amount originally collected for labor actually nets him a profit; that it is the same as

that charged by other warehousemen in this territory and that, when combined with the unloading charge, it results in the same revenue as that accruing under the handling and unloading charge now published in California Warehouse Tariff Bureau Tariff 7-B, C.R.C. No. 57, to which defendant is a party. It was only through defendant's negligence that the reduced rate was not established at the time.

The record fairly shows that the applicable charges were unjust and unreasonable, to the extent they exceeded those subsequently established. Defendant should be authorized to refund to A. W. Adams & Co. the charges collected in excess of those herein found reasonable, and should be authorized to waive collection of the undercharges outstanding. (San Francisco Milling Co., Ltd., v. Southern Pacific Co., 34 C.R.C. 453.)

The following form of order is recommended:

O R D E R

These cases having been duly heard and submitted,

IT IS HEREBY ORDERED that defendant D. W. Griggs, doing business under the fictitious name and style of American Warehouse, be, and he is, hereby ordered and directed to refund to complainant, A. W. Adams & Co., all charges collected for the storage of the merchandise involved in these cases, in excess of those that would have accrued on the basis of a rate of $1\frac{1}{2}$ cents per sack per month for storage, one cent per sack for labor, and $37\frac{1}{2}$ cents per ton unloading.

IT IS HEREBY FURTHER ORDERED that defendant, D. W. Griggs, doing business under the name and style of American Warehouse, be, and he is, hereby ordered to cease and desist from demanding from complainants, other than A. W. Adams & Co., charges for the storage of the merchandise involved in these cases in excess of $1\frac{1}{2}$ cents per

sack per month storage, one cent for labor and 37½ cents per ton unloading.

IT IS HEREBY FURTHER ORDERED that defendant D. W. Griggs, doing business under the fictitious name and style of American Warehouse, be and he is hereby authorized and directed to waive the existing undercharges on complainants' merchandise involved in these cases.

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. J. Leavelle
Leon Whitney
W. M. A. Co.
M. B. Harris
M. J. [unclear]
Commissioners.