

Decision No. 35883.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

EDWARD & JOEK BURKE, LMB.,  
Complainant,

vs.

METROPOLITAN WAREHOUSE COMPANY,  
Defendant.

Case No. 3527.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

This case is an aftermath of Re Allen Bros. Inc. et al., Decision 25024, dated August 1, 1933, 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 had been charged off-tariff rates. It 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 undercharge. The defendant warehouseman admits the allegation of the complaint and in effect joins in the prayer for relief.

Complainant stored in defendant's warehouse numerous lots of ginger ale in cartons or cases measuring .69, .7 and 1.5 cubic feet, and weighing 23, 24½ and 57 pounds respectively. On

the cartons measuring .69 or .7 cubic feet it paid charges at the rate of one cent per package per month storage,  $1\frac{1}{2}$  cents per package handling and 45 cents per ton unloading; on the cases measuring 1.5 cubic feet,  $1\frac{1}{2}$  cents per package per month storage,  $2\frac{1}{2}$  cents per package handling and 45 cents per ton unloading. The rates lawfully applicable were 2 cents per package per month for storage,  $2\frac{1}{2}$  cents per package for handling and 45 cents per ton for unloading.

The rates charged on the cartons measuring .69 and .7 cubic feet would have been applicable had the weight not exceeded 21 pounds. Because of the difference of 2 and  $3\frac{1}{2}$  pounds, however, the applicable charges were doubled. The cases measuring 1.5 cubic feet were subject to charges for cases measuring 2 cubic feet. Furthermore, had no specific commodity rate been provided for any of these articles, the rate on merchandise N.O.S. (not otherwise specified), which is the same as or lower than that sought, would have been applicable. Defendant states that it did not intend that the charges should be so materially increased because of the additional weight or larger size, 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 substantially 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.

The issues herein are substantially similar to those in Case 3451, Canada Dry Ginger Ale, Inc. vs. Union Terminal Warehouse, decided March 7, 1935, wherein the waiving of like undercharges was authorized. The record in that case was by stipulation made a part of the record here.

We believe that this is a matter in which a public hearing

is not necessary and that defendant should be authorized to waive collection of the outstanding undercharges. (San Francisco Milling Co. Ltd. vs. Southern Pacific Co., 34 C.R.C. 433.)

C R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant Metropolitan Warehouse Company be and it is hereby ordered to cease and desist from demanding from complainant Edward & John Burke, Ltd., charges for the storage and handling of the lots of ginger ale involved in this proceeding in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendant Metropolitan Warehouse Company be and it is hereby authorized and directed to waive the existing undercharges on complainant's merchandise involved in this case.

Dated at San Francisco, California, this 24<sup>th</sup> day of April, 1933.

C. J. Lewis  
Leon Whaley

M. B. Harris  
William H. ...  
Commissioners.