

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Pimney & Boyle Manufacturing Company,
Complainant.

vs

Case No. 504.

The Atchison, Topeka & Santa Fe Railway,
Defendant.

Fred P. Gregson, for Complainant,
E. W. Camp, for Defendant.

EDGERTON, Commissioner:

O P I N I O N.

The complainant is a corporation engaged in the manufacturing business at Los Angeles. Its petition filed November 13, 1913, attacks as unlawful the charges assessed for the transportation of a carload of sheet iron air tight heaters from Los Angeles to Oakland, in that charges were not assessed in accordance with the classification and rates applicable. Reparation is asked for in the sum of \$46.07.

On September 20, 1913, complainant shipped from Los Angeles via the rails of The Atchison, Topeka & Santa Fe Railway to the Merchants Express & Draying Company at Oakland, one carload of 1535 air tight heaters. Freight charges, exclusive of terminal switching, amounting to \$111.80 were assessed, based on the third class rate of 42½ cents per 100 pounds, for 256 heaters, with cast iron tops and bottoms, weighing 6862 pounds and the second class rate of 48½ cents per 100 pounds for 1279 sheet iron heaters at minimum carload weight of 17,040 pounds. Complainant contends that the charges should have been assessed at the fifth class rate of 27½ cents per 100 pounds, minimum 20,000 pounds as per Item 21 shown on Page 277 of Western Classification No. 51.

At the time this shipment moved Western Classification No. 51, C.R.C. No. 75 was in effect and provided the following ratings:

PAGE NO. 277

| ITEMS | L.C.L. | C.L. |
|--|--------|--------------|
| 20 STOVES, STOVE FURNITURE, FURNACES, AND PARTS OF: | | 5 |
| 21 Air Tight Heaters, sheet iron: | | Min. |
| 22 With cast iron tops and trimmings, or with cast iron lining, in packages or loose 3 | | wt. 20000 |
| 23 With sheet iron tops, taken apart, bodies nested, all parts in crates 3 | | lbs. |
| K.D. flat, in boxes 3 | | |

Miscellaneous items included in the C.L. bracket are carried to the bottom of Page 277 and extended to and including Item 31 on Page 278.

A note follows Item 31 on Page 278 and provides that certain other articles may be loaded with stoves. The note reads:

NOTE: Airtight Heaters, sheet iron, not otherwise indexed by name, in crates, Coal Hods, Sheet Iron exclusive of Russian, planished, or corrugated, Sheet Iron cut in shape for stovepipe, nested solid, Sheet Zinc, Stovepipe, Stovepipe Elbows and Stovepipe Thimbles may be loaded in mixed C.L., subject to Rule 21-B, with Stoves, Stove Furniture, Furnaces and Parts of, shown in items 20 to 35 page 277 and items 1 to 30 page 278, at 5th Class, min. wt. 20,000 lbs.

Rule 21-B, found on Page 12 of the classification, reads:

B. Carload ratings shown in the Classification for articles "subject to Rule 21-B" will not apply on straight carloads of the articles named. In such cases the amount of the articles so designated which may be included, shall not exceed 33-1/3 % of the minimum weight provided for the mixed carload.

Item 32, Page 278, reads:

| | L.C.L. | C.L. |
|--|--------|------|
| 32. Air Tight Heaters, sheet iron, not otherwise indexed by name: | | |
| In boxes or crates, L.C.L. 1 | | |
| In boxes or crates, C.L., min. wt. 12000 lbs., subject to rule 6-B 3 | | |

Complainant sought to demonstrate that the note following Item 31 on Page 278 of Classification was not a part of and had no bearing on the bracketed articles shown under the caption "Stoves, Stove Furniture, Furnaces and Parts", beginning with Item 20 on Page 277 and ending with Item 31 on page 278. I cannot agree with this interpretation of the Classification, for, while the foot-note carries no asterisk or symbol, it is clearly a part of and controls the articles which may be loaded in the mixed carload shipment. Qualifying foot-notes are carried throughout the Classification, and, as a general rule, follow the articles to which they refer, without being included in a bracket or designated by symbol. If complainant's position were correct, the value of the Classification would be destroyed.

Complainant seems to have overlooked the fact that the note on Page 278 of Classification on which he relies specifically refers to certain items and reads in part as follows:

" ***** Stoves, Stove Furniture, Furnaces and parts of, shown in items 20 to 35 page 277 and items 1 to 30 page 278, at 5th Class, min. wt. 20,000 lbs. "

The item of 1279 sheet iron heaters in this shipment is not covered by any of the items above mentioned, but is covered by Item 32, Page 278.

I fail to see how the heaters covered by Item 32, page 278 can be grouped with heaters mentioned in Items 20 to 35, page 277 and Items 1 to 30, page 278.

Considerable testimony was offered by complainant to the effect that they had been quoted the fifth class rate with a minimum of 20,000 pounds on air tight heaters. This testimony has but little value for the reason that the principle is firmly established that lawful tariff rates must be collected regardless of any quotations at variance with the tariffs, either oral or

written, furnished by agents or carriers. Roor vs C.B.&Q.
Ry. Co. 12 I.C.C. 418, also T. & P. Ry. Co. vs Mugg 202 U.S. 242.

Defendant entered as an exhibit a letter signed
J. W. Sheehan, Supt., Trans-Continental Freight Bureau, San
Francisco, stating that the shipment had been inspected at Oak-
land and found to consist of 256 Sheet Iron Air Tight Heaters,
with cast iron tops, bottoms and linings weighing 6862 pounds;
1279 Sheet Iron Heaters, N.O.I.B.N., not crated, actual weight
12,683 pounds. This description of the heaters was not mater-
ially contradicted by witnesses for complainant.

It is not alleged that the rates were unreasonable per
se, and no evidence was given either by the complainant or de-
fendant along those lines, and I, therefore, cannot pass upon
either reasonableness of classification or rates. This case in-
volves only the interpretation of the classification as applied
to the articles actually transported, and, taking into consider-
ation the entire record, I am of the opinion that the charges as
assessed are in strict conformity with the classification, its
rules and the tariff rates governing.

Under all of the circumstances of this case, I believe
complaint should be dismissed.

I submit the following order:

O R D E R.

Rinney & Boyle Manufacturing Company having filed its
complaint against The Atchison, Topeka & Santa Fe Railway Com-
pany and a hearing having been held, and being fully apprized
in the premises,

IT IS HEREBY ORDERED that the said complaint be and
the same is hereby dismissed without prejudice.

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 13th day
of March, 1914.

H. J. Loveland
W. G. Gordon
Max Thelen
Edwin A. Edgerton
Commissioners.

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