Decision No. 7201

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Rivers Brothers Company, Incorporated,
Complainant,

vs.

Terminal Refrigerating Co., and Los Angeles Ice & Cold Storage Co.,
Defendants.

CASE NO. 1496.

ORIGINAL

Charles Clifford, for Rivers Brothers Company.
Oscar Mueller, - for Los Angeles Ice & Cold Storage Co. and Terminal Refrigerating Company.
Rex Hardy, - - for Klein-Simpson Fruit Company, et al.

MARTIN, COMMISSIONER:

O P I N I O N

Complainant, Rivers Brothers Company, is a corporation engaged in the wholesale fruit and produce business at Los Angeles.

By complaint filed September 16, 1920, it alleges that the charge assessed for the storage of apples in warehouses of the defendants in excess of a season rate of 25 cents per box is discriminatory, excessive and unlawful. It is further alleged that the failure of these defendants to maintain a season rate on apples of 25 cents per box is in violation of Section 12 of the Food Warehousemen Act and Section 19 of the Public Utilities Act. Reparation is asked.

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The complaint recites that, effective July 22, 1919, there was established for the cold storage of apples a rate of 9 cents per box for the first month and 5 cents per box for each month thereafter, with no provision for a season rate, although there was in effect at the time a season rate of 25 cents per box in the food warehouses operated in San Francisco.

Complainant's main contention is that these defendants should have established and continued in effect season rate of 25 cents per box for the cold storage of apples in their Los Angeles warehouses.

There was before the Commission at the same time this case was presented Applications Nos. 6007, 6043 and 6052, involving the cold storage rates of the Los Angeles Ice & Cold Storage Company, the Marchants Ice & Cold Storage Company and the National Ice & Cold Storage Company. It was stipulated and agreed that the testimony and exhibits entered in connection with the three applications for increases in the cold storage rates at Los Angeles would be considered in the instant proceeding wherever relevant.

Hearings were held in Los Angeles in September and November, 1920 and January, 1921 in connection with Applications 6007, 6043 and 6052 and, under date June 24, 1921, by Decision No. 9139, the applications to increase the cold storage rates were denied. This decision gives historical data and other facts bearing upon the rates and service and it will not be necessary to here repeat the details.

The complainant submitted two exhibits, one showing the total number of boxes of apples stored with the Los Angeles Ice & Cold Storage Company, the other the same information with reference to the Terminal Refrigerating Company, giving the storage charges

paid and the charges that would have accrued under a season rate of 25 cents per box.

The evidence adduced by the complainant bears principally upon the contention that defendants failure to publish a season rate on apples, at Los Angeles, July 22, 1919, the date "Food Warehousemen Act" became effective, was discriminatory when compared with the season rates continued in effect at San Francisco, Watsonville and other points within California and at certain points on the Pacific Coast outside of California. There was no testimony given upon the reasonableness of the rate per se.

In Decision No. 9139 (Applications 6007-6043-6052), we employed the following language:

> "The tariffs and rules under which applicants are now operating are substantially the tariffs and rules existing on July 22, 1919, when this Commission's control under the Food Warehousemen Act became effective. During the period of the war and between the dates of September 1,1918 and February 22,1919, the United States Food Administration exercised a measure of control over the cold storage business and established rules and regulations intended to aid in the efficient production, distribution, and conservation of food products. The Food Administration also fixed maxima storage rates. It is to be noted, however, that there was no exclusive and definite rate fixing by the Food Administration and that the storage companies under its control were free to charge rates lower than the maxima established by the federal government. In the case of the storage companies, applicants in this proceeding, the rates in effect prior to the U.S.Food Administration's control had been lower than the maxima permitted by the Administration. Applicants, however, took advantage of the maxima and substantially raised all of their rates to conform to the highest permitted rates.
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> "Between February 22, 1919 (when the Food Administration's control terminated) and July 22, 1919 (when this Commission's control began), there was an interim during which certain adjustments and changes in rates and regulations were made by applicants, these changes generally tending towards an increase in charges. During this period, also, applicants discontinued the so-

> "called season rates, this form of rates having been criticised and in a measure condemned by the Food Administration as opposed to the principles which should govern in the matter of storage of food stuffs during the crisis of the war."

These applications sought authority to further increase cold storage rates from 20 to 60 per cent, and permission to make the increases was denied.

The defendants introduced during the proceeding five exhibits dealing entirely with the operations of cold storage plants while under federal control, the object of these exhibits being to show that prior to July 22, 1919, the date upon which Chapter 213, Statutes 1919, Food Warehousemen Act became effective, there was no jurisdiction by the Railroad Commission of the State of California over the charges assessed. Under date July 3, 1919 this Commission addressed a circular letter to all food warehousemen, calling attention to the new statute and directing that schedules be filed on or before July 22, 1919. These defendants filed, to become effective July 22, 1919, tariff containing the rates, charges, rules and regulations to be assessed in compliance with the law, until changed by proper authority. This tariff contains no season rate for the storage of apples, the rate for 300 boxes or more being 9 cents per box for the first month and 5 cents per box for each succeeding month. This is the charge paid by complainant and which it contends is unlawful and excessive and that the rate of 25 cents per box for the season should have been carried in the original tariff. Defendants did have in effect in July 1918 certain season rates covering the storage of apples, which rates remained in force until February 22, 1919, at which time the U.S.Food Administration's general

rules were cancelled. With the relinquishment of the Food Administration's control, in February, 1919, the food warehouses were under no jurisdiction as to charges and were permitted to assess any rate desired until July 22, 1919, when the Food Warehousemen Act became effective, which fact was admitted by complainant's principal witness.

From the foregoing, I believe it is clear that defendants did not violate the law by failing to publish a season rate for the cold storage of apples or other commodities, they having filed lawful tariff on July 22, 1919 in compliance with the law and, having charged uniform rates to all storers, I am forced to conclude that no discriminatory or otherwise unlawful charges were collected by the defendant.

With reference to the season rates, the following from Decision No. 9139, supra, is pertinent:

> "I am satisfied that season rates are discriminatory and unfair and that they have a tendency, to say the least, to encourage speculation in foodstuffs."
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> "The United States Food Administration, during the war, investigated quite exhaustively the matter of season rates for storage. It is realized that during the stress of the war period considerations governed which have not the same force in normal times. But it seems to me that some of the reasons given by the Food Administration in objecting to season rates are as good now as they were then. The Administration came to the following conclusions:
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> 'Season rates must be considered unfair and inequitable, because they do not represent accurate and reasonable compensation for services rendered.
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> 'The costs of conducting the cold storage business have exact reference to a small unit of time, such as a month, rather than a maximum period, such as a season. For instance, the principal items involved are rent, interest, depreciation, labor, etc., all figured on a monthly basis. Season rates must be regarded as discriminatory.
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> 'It has been customary, on season goods, to add the storage cost to the price of the

'goods, and to give the benefit of the unexpired season storage to the purchaser, regardless of whether the goods were to be carried for the season, or immediately withdrawn. This eventually added to the cost of the product to the consumer.

'Undoubtedly the season rate practice leads to undue length of time in carrying merchandise, which might be interpreted as "hoarding" or lending itself to speculative practices.'

"I recommend that season rates be permanently abolished and that the regular monthly unit rate should apply for all classes of merchandise."

The facts as disclosed by the testimony do not in any sense warrant the charge that defendants have violated Section 12 of the Food Warehousemen Act by the establishment of uniform rates at Los Angeles. As to the charge of violating Section 19 of the Public Utilities Act, the testimony shows that the discriminations alleged were as between localities, such as San Francisco and Watsonville on the one hand, and Los Angeles on the other. Since neither of these defendants operates cold storage plants at either of the competitive points, they may not be held responsible for the difference in rates.

The complaint should be dismissed.

O R D E R

Rivers Brothers Company, Incorporated, having filed a complaint against Los Angeles Ice & Cold Storage Company and Terminal Refrigerating Company charging violations of certain sections of the Food Warehouseman Act and the Public Utilities Act, hearings having been held thereon, and the Commission being

of opinion that the charges have not been sustained.

IT IS HEREBY ORDERED that the complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this 21 of July, 1921.

H. M. Rimmidge

H. D. Loveland

Irving Martin

Commissioners.