Decision No. 25974.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

W. & J. SLOANE,

Complainant,

vs.

UNION TERMINAL WAREHOUSE,

Defendant.

Case No. 3528.

James S. Webster, for complainant.

Richard E. Wedekind, for defendant.

BY THE COMMISSION:

O P I N I O N

This is an aftermath of Re Allen Brothers, Inc. et al., 37 C.R.C. 747, wherein the Commission found that various warehousemen in Los Angeles and vicinity, including the defendant here, had been departing from their published tariffs and ordered them to collect all undercharges. Complainant, one of the customers of the defendant which has been charged off-tariff rates, 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.

A public hearing was held before Examiner Kennedy at Los Angeles on May 4, 1933, and the matter submitted.

In cases of this character it is necessary that the Commission scrutinize most carefully the proofs in support of the complaint, lest by granting the petition 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 reparation upon the ground of unreasonableness, and the defendant had opposed the relief sought. Care must be taken to see that a discriminatory situation is not brought about, for attached to the Commission's power to award reparation is the salutary limitation that "no discrimination will result from such reparation" (Section 21 Article XII of the Constitution; Section 71(a) of the Public Utilities Act.

The facts developed in the record may be summarized briefly as follows:

Complainant stored in defendant's warehouse numerous lots of linoleum and felt base on which, with certain exceptions, charges for storage, handling and unloading were assessed and collected in accordance with the applicable tariff. In a few instances the minimum charge was not protected through inadvertence. However, in addition to the storage, handling and unloading, the tariff provided that a charge of 5 cents per roll would be made for delivery of merchandise by serial or pattern number. This charge was not assessed on complainant's merchandise.

Complainant rested its case solely upon a letter which it received from defendant's predecessor, quoting rates for storage, handling and unloading, but making no mention of any additional charge for delivery by serial or pattern number. Charges as quoted in this letter were assessed against complainant, which

paid them without question. At no time prior to our decision in Re Allen Brothers, Inc. et al., supra, were they informed either by defendant or its predecessor that they were not paying the full tariff charge.

Defendant admitted, by answer to the complaint and also by the testimony of its witness, that the 5-cent per roll charge for delivery by serial or pattern number was unreasonable, but denied that the applicable minimum was in any manner unlawful. Its admission of unreasonableness, however, is based entirely upon the fact that no such charge is made under the tariff now in effect. The record shows that the delivery actually did result in an additional expense to the warehouse and that the charge therefor was discontinued for competitive reasons.

That a utility's full tariff charge must in the first instance be protected has been definitely established. Section 17(b) of the Public Utilities Act provides that no public utility shall charge a greater or less or different compensation than the rates and charges specified in its schedules on file and in effect at the time. Both commissions and courts have consistently held that the filed and published rates are the lawful rates from which there can be no deviation. Penn. Railroad Co. vs. International Coal Co., 230 U.S. 184. San Francisco Milling Co.Ltd. vs. Southern Pacific Co., 34 C.R.C. 453. In the former proceeding the Court said: "The tariff so long as it was of force was in this respect to be treated as though it had been the statute, binding as such upon railroad and shipper alike."

Section 71(a) of the Act provides that upon a finding, after investigation, that a public utility has charged "an unreasonable, excessive or discriminatory amount", the Commission may order that the public utility make due reparation to the complainant

therefor. It will be noted however that the power to award reparation under this section is restricted to instances wherein the Commission has found that the charges made are unreasonable, excessive[1] or discriminatory. Complainant has been given an opportunity to make such a showing but has failed to do so. Where the required showing has been made reparation has been awarded. Kotex Company vs. E. S. Stanley, 38 C.R.C. 514. Canada Dry Ginger Ale, Inc. vs. Union Terminal Warehouse, 38 C.R.C. 516 et al.

Under the circumstances the Commission has no discretion in the matter. Its course is very positively laid out by the statute. It may well be that through erroneous quotations or otherwise storers acting in good faith are sometimes deceived or misled, and that on such grounds they are entitled to damages. Such right however, if it exists, does not lie with this Commission. On the record before us complainant's prayer must be denied.

O R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that this proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 29th day of May, 1933.

Commissioners.

[1] "The term 'excessive' used in Section 71 has been construed to mean a rate in excess of the tariff." Geo.H.Croley,Inc. v.Southern Pacific Co. et al., 33 C.R.C. 565 and cases cited therein.