

Decision No. 25975.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE LIBERTY CHERRY & FRUIT CO., INC.,

Complainant,

vs.

UNION TERMINAL WAREHOUSE and
PACIFIC COAST TERMINAL WAREHOUSE CO..

Defendants.

ORIGINAL

Case No. 3538.

Kirby Lynch, for the complainant.

R. E. Wedekind, for defendant Union Terminal
Warehouse.

F. L. Johnson, for defendant Pacific Coast
Terminal Warehouse Co.

BY THE COMMISSION:

O P I N I O N

This case 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 these defendants, had been departing from their published tariffs and ordered them to collect all undercharges. Complainant, one of the customers of defendants which has been charged off-tariff rates, now claims that the tariff rates were unreasonable to the extent they exceeded those actually paid and asks the Commission to authorize the waiving of the undercharge.

A public hearing was held at Los Angeles before Examiner

Kennedy on May 4, 1933, and the case 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 support and approval to what in substance and in effect is a rebate. The quantum and character of proof necessary to justify the relief must measure up to that which would be required had complainant paid the full tariff charges and then sought reparation upon the ground of unreasonableness and the defendants 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, Constitution; Section 27(a) Public Utilities Act.

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

Complainant stored in defendants' warehouses numerous lots of cherries in glass measuring from 3/17 to 12/17 cubic feet per case and weighing from 6½ to 25 pounds. The majority of the cases stored measured 5/17 cubic feet or less, and weighed not in excess of 14 pounds. On all of them it paid charges at a rate of 3/4 cent per case per month for storage, 1 cent per case handling and 45 cents per ton unloading.

The lawfully applicable rates were 1½ cents storage, 2 cents handling and 45 cents per ton unloading. These rates were published in California Warehouse Tariff Bureau, Tariff 7-A, C.R. C. No. 29, and apply on cases measuring not over one cubic foot nor weighing in excess of 30 pounds. No lower rates were provided for smaller sizes.

Complainant compares the assailed rates with rates of 1 cent storage, $1\frac{1}{4}$ cents handling and 45 cents per ton unloading concurrently applicable to merchandise N.O.S. in cases not over one cubic foot nor 50 pounds in weight and with a rate of $\frac{3}{4}$ cent storage and 1.2 cents handling, now in effect on bottled goods N.O.S., including fruits, meats, vegetables and fruit and vegetable juices in cases up to $\frac{1}{3}$ cubic foot and 15 pounds. Under the tariff now in effect, cherries in glass take the bottled goods N.O.S. rating. For the larger sized cases, this rate is 1 cent storage and 2 cents handling.

It is admitted by defendants that the applicable rates were unreasonable to the extent they exceeded those subsequently established.

Upon consideration of all the facts of record we are of the opinion and find that the rates applicable on complainant's merchandise were unjust and unreasonable to the extent they exceeded $\frac{3}{4}$ cent per case per month for storage, 1 cent per case handling and 45 cents per ton unloading on the cases measuring $\frac{5}{17}$ cubic foot or less, and 1 cent per case per month storage, $1\frac{1}{4}$ cents per case handling and 45 cents per ton unloading on the cases measuring $\frac{12}{17}$ cubic foot. Defendant should be authorized to waive collection of outstanding undercharges in excess of those herein found reasonable. (San Francisco Milling Co. Ltd. vs. Southern Pacific Co., 34 C.R.C. 453.)

O R D E R

This case having been duly heard and submitted,
IT IS HEREBY ORDERED that defendants, Union Terminal Warehouse and Pacific Coast Terminal Warehouse Co., be and they

are hereby ordered to cease and desist from demanding from complainant, The Liberty Cherry & Fruit Co., Inc., charges for the storage and handling of the lots of cherries involved in this case in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendants, Union Terminal Warehouse and Pacific Coast Terminal Warehouse Co., be and they are hereby authorized and directed to waive collection of charges on complainant's merchandise involved in this case in excess of those herein found reasonable.

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

C. L. Leary
W. H. Carr
W. B. Harris
W. H. Harris
Commissioners.