Decision No. 25976.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

COFFEE PRODUCTS OF AMERICA, INC., LTD.
Complainant,

vs.

H.G. CHAFFEE WAREHOUSE COMPANY,
CALIFORNIA WAREHOUSE COMPANY,
Defendants.

Case No. 3553.

ORIGINAL

R.S. Sawyer for Complainant.

C.H. Riggins for Defendant H.G. Chaffee Warehouse Company.

W.E. Fessenden for Defendant California Warehouse Company.

BY THE COMMISSION:

O P I N I O N

This case is an aftermath of Re Allen Bros. Inc. et al, 37 CRC 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 undercharges. Defendants are willing to waive these outstanding undercharges but do not admit that the lawfully published rates are unjust and unreasonable.

A public hearing was had at Los Angeles before Examiner Kennedy on May 5, 1933, and the case 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 relief sought it lends its sanction and approval to what in substance and 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 reparations 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 this Commission's power to grant reparation is a salutary limitation "that no discrimination will result from such reparation" (Section 21, Article XII of Constitution, Section 71(a) of the Public Utilities Act).

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

Complainant stored in defendants' warehouses numerous lots of chili peppers in bales, measuring 4-1/6 by 1½ by 2½ cubic feet and weighing from 125 to 200 lbs. On them it paid 5 cents per bale per month for storage plus handling charges which are not here in issue. The storage charge lawfully applicable at the time was 8 cents per bale per month. In 1926 arrangements were made between complainant and defendant H.C. Chaffee Warehouse Company to store such bales at 2½ cents per square foot. As they were customarily piled, this amounted to about 5 cents per bale, which charge was later adopted for convenience. The California Warehouse Company originally assessed its applicable rate, but upon learning that its competitor was collecting less, adjusted its charges accordingly. Both defendants store these peppers in their basements in space that is unsuitable for most classes of commodities.

Because of the low value of the commodity complainant states that storage at the 9-cent rate would have been unprofitable. It could have held these peppers in its own building at a cost of about 6 cents per bale. Whether or not such storage would have been comparable to that furnished by defendants the record does not disclose. Complainant relies almost entirely on the fact that defendants had agreed to the 5-cent per bale charge.

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 CRC 453. In the former proceeding the United States Supreme 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 CRC 514, Canada Dry Ginger Ale, Inc. vs. Union Terminal Warehouse, 38 CRC 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

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[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 CRC 565 and cases cited therein.

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.

C. Hanley

M. J. Carr

Wm. R. Harris

Matthew S. Marr.

COMMISSIONERS.