

Decision No. 25377.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WESTERN DAIRY PRODUCTS, INC.,
Complainant,
vs.
UNION TERMINAL WAREHOUSE and
PACIFIC COAST TERMINAL WAREHOUSE CO.,
Defendants.

Case No. 3554.

ORIGINAL

Harry C. Cogen and Oscar R. Cummins, for
complainant.

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

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

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 ware-
housemen 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 exceed-
ed those actually paid and asks the Commission to authorize the
waiving of the undercharges. Defendant Union Terminal Warehouse

denies that the applicable charges were in any way unlawful and asks that the complaint be dismissed. Defendant Pacific Coast Terminal Warehouse Co. admits the allegations of the complaint and joins in the prayer for relief.

A public hearing was held before Examiner Kennedy at Los Angeles May 5, 1933, and the case submitted.

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

Complainant stored in defendants' warehouses numerous lots of powdered milk in barrels of 100 and 200 pounds net weight. The gross weight of the 100-pound barrels was from 110 to 112 pounds and of the 200-pound barrels from 220 to 225 pounds. A 200-pound barrel occupies about 9.14 cubic feet if measured in straight lines from its widest dimensions. Charges were assessed and collected by defendant Union Terminal Warehouse at rates of 2 cents per barrel per month storage and 2½ cents per barrel labor on the smaller barrels, and 4 cents storage and 5 cents labor on the larger ones. The Pacific Coast Terminal Warehouse Co. collected the same rates for storage, but charged 5 and 12 cents respectively for handling the 100- and 200-pound barrels. The applicable rate at the time was 6 cents storage and 10 cents labor on barrels measuring 7 cubic feet or less, and 10 cents storage and 14 cents labor on barrels of 10 cubic feet or less. The charge for unloading was 45 cents per ton on barrels weighing 150 pounds or less and 60 cents per ton on heavier barrels.

California Warehouse Tariff Bureau Tariff 5-H, C.R.C. 59, in which both these defendants participate, now provides rates of 2 cents storage and 5 cents handling for drums weighing 120 pounds or less, and 4 cents storage and 12 cents handling for barrels weighing 260 pounds or less. These rates include

receiving from car or dray. Had the tariff in effect at the time complainant's merchandise was stored permitted charges to be assessed on a weight instead of a cubic foot basis, the applicable charges would have been substantially lower. Complainant contends that if cubic measurements are used they should be figured on the actual dimensions of the barrel rather than by use of straight lines from its widest dimension. It points out that actual dimensions are used in computing charges on cotton duck in rolls.

Complainant compares the applicable charges with charges of 8 cents storage, $11\frac{1}{2}$ cents handling; 10 cents storage, 10 cents handling; and 5 cents storage and $10\frac{1}{2}$ cents handling applying respectively at Salt Lake, El Paso and Seattle for barrels weighing 200 pounds net and with lower rates in effect at a Los Angeles warehouse. It relies largely upon written rate quotations (the original signed copies of which it introduced in evidence), the fact that the rates now in effect are substantially lower, and the admission of the Pacific Coast Terminal Warehouse Co.

The Union Terminal Warehouse claims that the rates now in effect are depressed for the purpose of meeting competition and do not represent a reasonable adjustment. In substantiation of this contention it contrasts these rates with those applicable on dessicated cocoanut, starch, baking powder, and merchandise N.O.S. when stored under conditions said to be substantially similar. These rates are considerably in excess of those charged.

The witness for the Pacific Coast Terminal Warehouse Co. while testifying that his company derived a fair and equitable return under the quoted rates admitted on cross-examination that he had never made any specific computation to determine the cost of handling these goods.

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 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 grant reparation is a 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).

Upon consideration of all the facts of record we are of the opinion and find that the charges applicable on complainant's merchandise were unjust and unreasonable to the extent they exceeded those that would have accrued at rates of 4 cents per barrel per month storage, 6 cents per barrel handling, and 45 cents per ton unloading on barrels weighing 100 pounds net, and 8 cents per barrel per month storage, 12 cents per barrel handling, and 60 cents per ton unloading on the 200-pound barrels. Defendants will be required to waive collection of outstanding charges in excess of those found reasonable.

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

Western Dairy Products, Inc., charges for the storage and handling of the lots of powdered milk 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 the charges on complainant's merchandise in excess of those herein found reasonable.

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

C. J. Jones
W. H. Carr
M. B. Harris
M. J. [unclear]
Commissioners.