

Decision No. 25978.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

S. SHOKEN & COMPANY,

Complainant,

vs.

H. G. CHAFFEE WAREHOUSE COMPANY,  
a corporation,

Defendant.

Case No. 3555.

U. R. Gerecht, for complainant.

C. H. Riggins, 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 this defendant, had been departing from their published tariffs and ordered them to collect all undercharges. Complainant, one of the customers of defendant which has been charged off-tariff rates, now claims that the tariff rates were unreasonable to the extent they exceeded those actually paid, and asked the Commission to authorize the waiving of the undercharge. Defendant admits the allegations of the complaint, and in effect joins in the prayer for relief.

A public hearing was held at Los Angeles before Examiner Kennedy May 5, 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 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 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 second-hand bags in bales measuring approximately 22 by 36 by 17 inches and weighing between 70 and 80 pounds. The bales contained from 200 to 500 bags each, but averaged 250. Not more than one per cent. of all the lots stored ran as high as 500 bags per bale. For the storage defendant assessed and collected charges at a rate of 6 cents per bale, plus handling and unloading charges which are not here in issue. At the time there was no specific commodity rate in effect for second-hand bags. For the storage of new bags in bales of 500 or less defendant maintained a rate of 7 cents per bale. Defendant's former manager, called by complainant, testified that at the time these bags were stored defendant's rates were generally constructed to return to the warehouse from 4 to 6 cents per square foot of floor space. Bags cover about 6 square feet and are con-

veniently stored 8 to 10 bales high. Under these circumstances the 6-cent per bale rate returns in excess of 6 cents per square foot. The record shows that from a warehouseman's standpoint second-hand bags are very preferred merchandise for the reason that the risk is small, they are easy to handle, not subject to damage or claims, not affected by dust, and of low value. They were stored in volume of from 30 to 40 bales per day. A rate of 6 cents per bale of 250 bags or less for storage of used second-hand bags has since been established in California Warehouse Tariff Bureau, Tariff 5-G, C. R.C. 59, to which defendant is a party.

Upon consideration of all the facts of record we are of the opinion that the applicable rate was unreasonable to the extent it exceeded that subsequently established, and that defendant should be authorized to waive collection of the outstanding undercharges.

(San Francisco Milling Co. 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 the defendant H. G. Chaffee Warehouse Company be and it is hereby ordered to cease and desist from demanding from complainant S. Shuken & Company charges for the storage of the second-hand bags involved in this case in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendant H. G. Chaffee Warehouse Company be and it is hereby authorized and directed to waive the existing undercharges on complainant's merchandise involved in this case.

Dated at San Francisco, California, this 29<sup>th</sup> day of May, 1933.

C. S. Leary  
W. J. Ann  
W. L. Harris  
Commissioners.