Decision No. 26284.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE HILLWOOD MANUFACTURING CO.,
Complainant,

vs.

PACIFIC COAST TERMINAL WAREHOUSE COMPANY,
Defendant.

Case No. 3586.

ORIGINAL

Joseph H. M. Thayer, for complainant.

F. L. Johnson, 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 herein, 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 originally assessed, and seeks reparation on that basis.

A public hearing was held before Examiner Kennedy at Los Angeles August 9, 1933, and the matter submitted.

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

Complainant stored in defendant's warehouse numerous lots of tacks in kegs measuring approximately 16 inches in height, 12½ to 13 inches in diameter and weighing 108 pounds. Charges of 1½¢ per keg named in California Warehouse Tariff Bureau Tariff No.7-A, C.R.C. No. 29, and conforming to an agreement previously made, were assessed and collected in the first instance. On September 10,1932, complainant was presented with an additional bill for $95.03 to cover minimum storage and handling charges provided for in Rule 4 of the tariff. This bill was later paid under protest.

Complainant contends that it had no knowledge of these minima at the time the goods were stored; that it entered into the agreement referred to in good faith and that the applicable charges are unreasonable in that in certain instances they approximate the value of the article stored.

Complainant made no study of the cost of the service or the relationship of the applicable rates to those applying on other similar commodities either at defendant's or at other warehouses in this territory.

Defendant denied the material allegations of the complaint.

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. (Pennsylvania R.R. vs. International Coal Co., 230 U.S. 184; San Francisco Milling Co. Ltd., vs. Sou.Pac.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 Co. 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 21st day of August, 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., vs. Southern Pacific Co. et al., 33 C.R.C. 565, and cases cited therein.)