

Decision No. 26285.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

KINGSBURY SALES COMPANY,
Complainant,

vs.

COOK-MCFARLAND COMPANY,
Defendant.

Case No. 3597.

ORIGINAL

E. C. Steiner, for complainant.

J. D. Taggart, 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 actually paid, and asks the Commission to authorize the waiving of the undercharge.

A public hearing was held before Examiner Kennedy at Los Angeles August 9, 1933, and the matter 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 petition, it lends its sanction and approval to what, in substance and effect, is a rebate. The quantum and character of proof necessary to justify relief must measure up to that which would be required had this 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 XIII, Constitution; Section 71(a) Public Utilities Act).

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

Complainant stored in defendant's warehouse during the period February 1, 1930, to September 30, 1932, numerous cases of beverages and of empty beverage bottles. The cases in each instance measured $17\frac{1}{2}$ by $11\frac{1}{2}$ by $10\frac{1}{2}$ inches, or slightly less than $1\frac{1}{2}$ cubic feet. The cases containing the filled bottles weighed 46 pounds; those containing the empty ones weighed but 26 pounds. The record is contradictory as to what charges were assessed in the first instance. However, balance due bills were issued on basis of rates of 2¢ per case per month storage, $2\frac{1}{2}$ ¢ per case handling and 45¢ per ton unloading on the filled bottles, and $1\frac{1}{2}$ ¢ per case per month storage, 2¢ handling and 45¢ per ton unloading on the empties. The rate on the filled bottles is a specific rate on beverages in cases of 2 cubic feet or less (the next lower rate named in the tariff applies on cases not over $\frac{3}{4}$ cubic foot nor 21 pounds). The rate on the empties applies on merchandise N.O.S. in cases not over $1\frac{1}{2}$ cubic

feet nor 75 pounds. The lowest specific rate on empty bottles applied on cases of 6 cubic feet or less.

The cases are piled 11 high and produce according to complainant's calculation a return of 34¢ per square foot of floor space. These calculations however are based on the combined storage and handling charge. The unloading charges, it contends, should not exceed \$7.00 per car, an amount obtained by figuring 7 hours labor at \$1 per hour. Complainant also contends that the charge for the empty bottles is excessive in proportion to that on the filled ones. It states that it did not know defendant was a public utility, that it based its price on the bills originally presented, and that had it known about this additional charge it would have performed its own storage. It emphasizes the fact that it stored approximately 2 carloads per month in defendant's warehouse.

Effective October 1, 1932, in California Warehouse Tariff Bureau Tariff 7-B, C.R.C. 57, to which defendant is a party, there were established rates of 1½¢ storage and 3¼¢ handling on beverages in cases up to 1½ cubic feet, and on empty bottles in cases of this same size and weighing not more than 37 pounds, rates of 1½¢ storage and 2.5¢ handling. These rates include the unloading charge.

This case is in part parallel to Canada Dry Ginger Ale, Inc., vs. Union Terminal Warehouse, 38 C.R.C. 516, and Van Lendingham Western Sales, Inc. vs. Union Terminal Warehouse et al., 38 C.R.C. 519, wherein the charges applicable on ginger ale were found to have been unreasonable to the extent they exceeded those subsequently established.

It is admitted by defendant that the charges assessed were unreasonable to the extent they exceeded those that would have ac-

crued had the present rates been in effect, and the record so shows. Defendant will be authorized to waive collection of outstanding charges on this basis.

C R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that defendant Cook-McFarland Warehouse Company be and it is hereby ordered to cease and desist from demanding from complainant Kingsbury Sales Company charges for the storage and handling of the lots of ginger ale and empty ginger ale bottles involved in this case in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendant Cook-McFarland Warehouse Company be and it is 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 21st day of August, 1933.

 O'Keefe
 Leon O'Connell
 W. B. Lewis
 H. B. Lewis

Commissioners.