

Decision No. 26340 .

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

STEPHEN G. MARTINELLI, LEASE
MARTINELLI and ANNA M. DONDERO,
co-partners, doing business un-
der the fictitious name and style
of S. MARTINELLI & COMPANY,

Complainants,

vs.

COOK-MCFARLAND COMPANY, a corpora-
tion,

Defendant.

Case No. 3631.

ORIGINAL

Wallace K. Downey, for complainant.

T. 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 warehouse-
men 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 ex-
ceeded those actually paid and asks the Commission to authorize
the waiving of the undercharges.

A public hearing was held at Los Angeles before Examiner
Kennedy September 8, 1933, and the case submitted.

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

Complainant stored in defendant's warehouse numerous lots of apple cider and vinegar in containers of 13 different sizes, ranging from .61 to 6.5 cubic feet and weighing from 24 to 237 pounds. On the 11 smaller sizes defendant assessed and complainant paid charges at rates of 1½¢ per container, and on the two larger ones at 3 and 8 cents per container. The charges lawfully applicable were 2¢ on the smaller sizes and 4¢ and 8¢ respectively on the larger sizes. Those now in effect are published in California Warehouse Tariff Bureau Tariff 7-B, C.R.C. No. 57, and are substantially of the volume of those originally collected.

Complainant alleges that prior to the time these under-charge bills were presented, defendant did not disclose that the charges assessed were not in accordance with the filed tariff, and that they have been regularly applied since these commodities were first stored prior to the time warehousemen were subject to the Commission's jurisdiction. It also testified that its profits on this merchandise scarcely exceed the additional charges now sought to be collected. Provision for storage at lower rates, it contends, could have been made at private warehouses, although it admits that the facilities there available would not be entirely comparable.

Defendant did not attempt to justify rates in excess of those now in effect. In fact it admits that the present rates would have been fair during the period here involved.

We consider this a border-line case. The fact however that rates of the volume of those assessed on complainant's merchandise were applied prior to the time warehousemen were required

to file tariffs with this Commission, that they have been applied continuously since, and that they are of substantially the same volume as those now in effect, together with defendant's admission, leads us to the conclusion that the applicable charges were unreasonable to the extent they exceeded those now in effect. Defendant will be authorized to waive collection of the charges outstanding in excess of those that would have accrued on basis of the rates now in effect.

O R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that defendant Cook-McFarland Company be and it is hereby ordered to cease and desist from demanding from complainant Stephen G. Martinelli, Leask Martinelli and Anna M. Dondero, co-partners doing business under the fictitious name and style of S. Martinelli & Company, charges for the storage of the lots of apple cider and vinegar involved in this case in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendant Cook-McFarland Company be and it is hereby authorized and directed to waive collection of the existing storage charges on complainant's merchandise involved in this case.

Dated at San Francisco, California, this 18th day of September, 1933.

W. H. ...
L. ...
M. J. ...
M. B. ...
Commissioners.

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W. C. Weaver
Leon C. Whelan
M. J. Linn
M. B. Harris
Commissioners.