

Decision No. 28241.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SUMATIRO HARADA and T. SEIMOKOSHI,
individually and as co-partners,
doing business under the fictitious
name and style LOS ANGELES FARMERS
SUPPLY COMPANY, and LOS ANGELES
FARMERS SUPPLY COMPANY, a copart-
nership,

Complainants,

vs.

COOK-MCFARLAND COMPANY, a corporation,
Defendant.

ORIGINAL

Case No. 3666.

J. Marion Wright, for complainants.

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. Complainants, customers of defendant which have
been charged off-tariff rates, now claim that the tariff rates were
unreasonable to the extent they exceeded those actually paid, and
ask the Commission to authorize the waiving of the undercharges.
Defendant does not deny 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 September 8, 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.)

Approximately ten years ago, before warehousemen were required by law to file their rates with the Commission, complainants purchased some 300 crates of toilet paper, then in storage in defendant's warehouse. Parts of this lot were removed from time to time until there are now but 34 cases left. On the ones stored defendant assessed and complainants paid storage charges on basis of $\frac{3}{4}$ ¢ per cubic foot up to the time of the Commission's decision In Re Allen Brothers, Inc., supra. Thereafter storage charges were assessed and collected on basis of $\frac{1}{4}$ ¢ per cubic foot. Handling charges are not here involved. The crates measured about 7 cubic feet and weighed approximately 50 pounds each. The rate lawfully applicable during the period in question was $\frac{7}{8}$ ¢ per case or $\frac{1}{4}$ ¢ per cubic foot.

Complainants testified that the toilet paper was unsalable, that it was being given away free, and that it would have been taken out of storage a long while ago had they known that charges in excess of those paid were applicable.

Defendant stated that the charges actually paid for this storage many time exceeded the value of the commodity, and that considering the grade and class the charges collected were reasonable. It agrees that the merchandise is unsalable and is willing to establish a rate of $\frac{1}{2}$ ¢ per cubic foot to apply on this unsalable paper in the future. This rate, it contends, compares favorably with those on other low grade articles.

The record fairly shows that the charges applicable for the storage of this unmerchantable toilet paper were and are unjust and unreasonable to the extent they exceeded those paid. Defendant will be authorized to waive collection of the undercharges outstanding, and should publish for the future a rate of the volume of that found reasonable.

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 complainants charges for the storage of the unmerchantable toilet paper 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 the existing undercharges on complainants' merchandise involved in this case.

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

C. J. Lewis
Wm. B. Lewis
M. J. Carr
W. B. Lewis
Commissioners.