

Decision No. 26478.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

YOUNG'S MARKET COMPANY,

Complainant,

vs.

CENTRAL WAREHOUSE AND STORAGE
COMPANY,

Defendant.

Case No. 3614.

ORIGINAL

Charles H. Schaeffer, for complainant.

Leroy R. Anderson, for defendant.

BY THE COMMISSION:

O P I N I O N

This is an aftermath of Re Allen Bros. 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 25, 1933, and the matter submitted.

Complainant stored in defendant's warehouse at 1327-29

Palmetto Street, Los Angeles, during the period October 1930 to April 1931, both inclusive, 13 carloads of dog food in containers measuring 9 x 12 x 18 inches or 1-1/8 cubic feet and weighing approximately 60 pounds. On them, defendant assessed and complainant paid charges based on 6¢ per square foot per month storage plus 1¢ per case handling. California Warehouse Tariff Bureau Tariff No. 7-A, C.R.C. No. 29, to which defendant was a party and which was in effect during this period, in Item No. 288 provided a rate of 1 1/2¢ per case per month storage and 2¢ per case handling on cases of 1 1/2 cubic feet or less. This resulted in an additional charge of \$796.31 which complainant here seeks to have waived.

The reasons advanced by complainant to show that the outstanding charges should be waived are as follows:

1. The charges collected were agreed to beforehand.
2. The storage was for the account of a third party.
3. Defendant had no rate in effect at the time covering storage at Palmetto Street.
4. The charges defendant seeks to collect are excessive.

These contentions will be considered in the order given:

1. In W. & J. Sloane vs. Union Terminal Warehouse, 38 C.R.C. 752, it was pointed out that regardless of any private agreement, under the statute a utility's tariff charge must be protected in the first instance, and that this Commission can only award reparation upon a finding after investigation that the utility has charged "an unreasonable, excessive or discriminatory amount". The applicable charges therefore cannot be waived on the ground that they were different from those agreed to.

2. That the storage was for the account of a third party

is not supported by the evidence. The agreement heretofore referred to and all other transactions pertaining to the storage of the merchandise during the period here involved were made by complainant, who paid the charges originally assessed and who instituted this proceeding. Clearly complainant is responsible for the lawful charges.

3. California Warehouse Tariff Bureau Tariff 7-A, C.R.C. No. 29 heretofore referred to, shows that it is issued for and on behalf of Central Warehouse and Storage Company under Power of Attorney Form WH 1 No. 1 and that up to February 2, 1931, it applied at this company's warehouse at 447-453 Commercial Street, Los Angeles. By amendment effective February 2, 1931, the address of defendant's warehouse at which the rates contained in the tariff apply was changed to read "1327-29 Palmetto Street, Los Angeles". No change was made in the volume of the rates applying on complainant's merchandise. The record shows that defendant actually changed its place of business in August 1930 and that the storage here involved was performed at the new address. The tariff in issue was in effect during the entire period here involved and plainly showed that it was participated in by the Central Warehouse and Storage Company. We do not believe that defendant's failure to change immediately the address shown in the tariff makes the rates therein inapplicable.

4. In support of its contention that the charges sought to be collected are excessive complainant argues that for competitive reasons it could not afford to pay a higher rate, that at times goods had become wet or damaged, that certain other warehouses made quicker deliveries, that defendant's warehouse is a Class "C" building and that in a Class "A" building maintained by

the Los Angeles Warehouse Company charges would have been no higher. There is nothing in this record to show that the charge of the Los Angeles Warehouse Company was proper or that excepting for the class of building it was made under like circumstances and conditions.

Defendant denies that the charges sought to be collected are unjust and unreasonable. Its witness testified that to the best of his knowledge none of complainant's merchandise was ever damaged while in its warehouse or while being unloaded and that deliveries were at all times made with reasonable dispatch. It points out that although the agreed rates were to apply only on quantities aggregating fifty carloads per year but thirteen carloads were stored.

The charges now in effect at Class "A" warehouses in Los Angeles generally are the same for storage, and while differently stated are but slightly lower for handling than those applicable at defendant's warehouse at the time these goods were stored. At certain Class "C" warehouses including defendant's the charge for storage is 5% less.

Upon consideration of all the facts of record we are of the opinion and find that the charges defendant seeks to collect for the storage of the fifteen carloads of dog food involved in this proceeding are applicable but that they are unreasonable to the extent they exceed those that would have accrued at the rates named in defendant's present tariff. Defendant should be authorized to waive collection of all charges in excess of those herein found reasonable. All other outstanding charges should be collected forthwith.

O R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that defendant Central Warehouse and Storage Company be and it is hereby authorized to waive collection of charges for the storage and handling of the thirteen carloads of dog food involved in this proceeding in excess of those herein found reasonable.

Dated at San Francisco, California, this 30th day of October, 1933.

O. S. Leary
Leon Whittell
M. A. Lee
M. B. Lewis
Matthew Moore
Commissioners.