

Decision No. 25297.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MARS, INCORPORATED,
Complainant,
vs.
UNION TERMINAL WAREHOUSE,
Defendant.

ORIGINAL

Case No. 3709.

R. E. Wedekind, for complainant and defendant.

BY THE COMMISSION:

O P I N I O N

This case is an aftermath of Re Allen Bros. Inc. et al., Decision No. 25024, dated August 1, 1932, in which the Commission, finding that various warehousemen in Los Angeles and vicinity, including the defendant here, had been departing from their published tariffs, ordered such warehousemen promptly to proceed to collect all undercharges. The complainant is one of the customers of the defendant which has been charged off-tariff rates and which 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. The defendant admits the allegations of the complaint and joins in the prayer for relief.

A public hearing was held before Examiner Kennedy at Los

Angeles December 5, 1933, and the case was 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 petition, it lends its sanction and approval to what in substance and in 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 reparations upon the ground of unreasonableness, and the defendant had opposed the relief sought. And care must be taken to see that a discriminatory situation is not brought about, for attached to this Commission's power to grant reparation is the salutary limitation "that no discrimination will result from such reparation" (Section 21 Article XIII of the Constitution; Section 71(a) of the Public Utilities Act).

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

Between January 2, 1931, and March 3, 1932, complainant stored in defendant's warehouse, 132 carloads of chocolate candy in cases measuring $1\frac{1}{2}$ cubic feet or less in size and weighing not more than 50 pounds. Charges based on rates of $1\frac{1}{4}$ cents per case per month for storage and $2\frac{3}{4}$ cents per case for handling were assessed and collected. The rates lawfully applicable were $2\frac{1}{2}$ cents per case per month for storage, $3\frac{1}{2}$ cents per case for handling, and 45 cents per ton for unloading. In addition to the charge for storage, handling and unloading the applicable tariff provided a charge of one cent per case, minimum 15 cents, for all marking service performed. Because of this difference between the charges collected and those applicable there are outstanding undercharges aggrega-

ting \$3.176.56, the waiving of which the Commission is here sought to authorize.

The rates paid were quoted to complainant by the Union Terminal Warehouse Company, a predecessor of the defendant herein. They are of the same volume as those defendant now extends to accounts aggregating 100 carloads or more per year.¹ On lots of less than 100 carloads per year defendant on October 1, 1932, established rates of $1\frac{1}{4}$ cents per case per month storage and 3 cents per case handling for cases measuring up to one cubic foot and weighing up to 50 pounds, and 2 cents per case per month storage and 4 cents per case handling for cases measuring up to $1\frac{1}{2}$ cubic feet and weighing up to 75 pounds. These latter rates also apply at other warehouses in this territory regardless of the quantity stored.

Complainant's Exhibit No. 3 compares the rates sought and those lawfully applicable with rates for the warehousing of a number of commodities. The results of these comparisons are as follows: In 10 instances the compared storage rates are higher, in 4 the same, and in 2 lower than those now sought by complainant. Likewise in 10 instances the handling rates are higher and in 6 lower than those sought. On 3 commodities the storage and handling rates include marking. The rates compared however do not uniformly apply on packages of the size and weight of those here involved, nor is it shown that the value and other circumstances attending the warehousing of these commodities are comparable to those of complainant's merchandise.

Defendant marked certain of the shipments but did not

¹ Item No. 43, Supplement No. 2 of California Warehouse Tariff Bureau Warehouse Tariff No. 5-I, C.R.C. No. 65.

prepare the bills of lading. In few cases was it presented with damage claims arising from the storage of this merchandise.

Complainant's merchandise had a rapid turnover and is said to have produced a storage revenue of 5.94 cents per square foot per week or 23.76 cents per square foot per month at the rates collected. Under the applicable rates the revenue for storage would have been 8.12 cents per square foot per week or 32.48 cents per square foot per month. Defendant testified that the rates in its present tariff are based on an approximate average return of 7 to $7\frac{1}{2}$ cents per square foot per month.

These figures however are not conclusive that the applicable charges are unreasonable. A mere showing that a return exceeds that on average commodities unaccompanied by a showing as to the relation between average commodities and the one in issue is of little probative value. Many if not all of the commodities shown on complainant's Exhibit 3 if piled in a like manner would return to the warehouse more than $7\frac{1}{2}$ cents per square foot, yet it is not intimated that these rates are unreasonable.

On this record we find that the charges applicable were unjust and unreasonable to the extent they exceeded charges based on rates of $1\frac{1}{2}$ cents per case per month storage, 3 cents per case handling, and one cent per case, minimum 15 cents, per lot for marking wherever marking service was performed by defendant. Defendant will be authorized to waive collection of all charges in excess of those herein found reasonable.

O R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that defendant Union Terminal Warehouse be and it is hereby ordered to cease and desist from demanding from complainant Mars, Incorporated charges for the storage, handling and marking of the lots of candy involved in this proceeding in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendant Union Terminal Warehouse be and it is hereby authorized and directed to waive all charges outstanding against Mars, Incorporated for the warehousing of the merchandise involved in this proceeding in excess of those herein found reasonable.

Dated at San Francisco, California, this 3rd day of ~~September, 1933.~~ January, 1934.

O. C. Leary
Leon Wideman
M. A. Paine
M. B. Harris
W. H. Harris
Commissioners.