

Decision No. 26916.

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 both complainant and defendant.

BY THE COMMISSION:

OPINION ON REHEARING

The Commission by Decision No. 26697 (January 3, 1934), in the above entitled proceeding ordered defendant to waive a portion of the undercharges resulting from the failure of said defendant to collect the lawful tariff rates for the storage and handling of 132 carloads of chocolate candy. The Commission, for lack of sufficient evidence, refused to accord complainant the full measure of relief prayed for in the complaint.

Upon complainant's and defendant's petition a rehearing was granted, and had before Examiner Brown at Los Angeles.

The facts developed on the original record, as supplemented by additional evidence on rehearing, may be summarized briefly as follows:

The chocolate candy was stored by complainant in defendant's warehouses in 1931 and 1932. The charges assessed were $1\frac{1}{2}$ cents per case per month for storage and $2\frac{3}{4}$ cents per case for handling. These rates were considerably less than those shown in the tariff ($2\frac{3}{4}$ cents per case per month for storage, $3\frac{1}{2}$ cents per case for handling, 45 cents per ton for unloading, and one cent per case, minimum 15 cents, for marking).

Subsequent to the storage and handling of the 132 carloads upon which complainant is seeking a waiver of the undercharges defendant established in Item No. 43, Supplement No. 2, California Warehouse Tariff Bureau Warehouse Tariff No. 5-I, C.R.C. No. 65, the rates which were originally assessed. These rates are based upon a minimum of 100 cars per year.

The chocolate candy manufactured by complainant is stored in defendant's warehouses in substantial lots and has a comparatively rapid turnover. It is packed in cases measuring $1\frac{1}{2}$ cubic feet in size and weighing approximately 46 pounds. The value per case is \$8.00, or \$344 per ton. Based upon the storage and handling of chocolate candy during the year 1931 the revenue derived from the storage of this commodity compares favorably with that obtained from other commodities such as certo, cashew nuts, syrup, baking powder, chocolate coating, and cigarettes. During that year complainant stored 120 carloads in defendant's warehouse, each carload containing an average of 660 cases, which required an area of 3055 square feet. The average turnover per week was approximately $2\frac{1}{2}$ carloads, resulting in 363.75 feet being occupied each week. The storage revenue derived from $2\frac{1}{2}$ carloads amounted to \$45.38 per week, yielding a revenue of 5.94 cents per square foot per week or approximately 23.76 cents per square foot per month.

Upon further consideration of the record in this proceed-

ing in the light of the additional evidence on rehearing, we find that the charges applicable were unjust and unreasonable to the extent they exceeded charges of $1\frac{1}{2}$ cents per case per month for storage and $2\frac{3}{4}$ cents per case for handling and such other services as may have been rendered in connection therewith. Defendant will be authorized to waive collection of all charges in excess of those herein found reasonable.

O R D E R

This matter 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 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 found reasonable.

IT IS HEREBY FURTHER ORDERED that the Commission's Decision No. 26697, dated January 3, 1934, in Case No. 3709 be and it is hereby vacated and set aside.

Dated at San Francisco, California, this 3^d day of April, 1934.

D. C. Sawyer
Leon A. Whittell
W. B. Blaine
W. H. M. M. M.
COMMISSIONERS.