Decision No. 26947

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CERTIFICATED HIGHWAY CARRIERS, INC., a corporation, Complainant, vs. CHARLES J. CAMBLE, doing business under the fictitious name and style of SAN DIEGO FORWARDING COMPANY, Defendant.	Case No. 3777

Wallace K. Downey, for Complainant.
F. A. Jones and C. J. Gamble, for Defendant.
Berne Levy, G. E. Duffy, for The Atchison, Topeka & Santa Fe Railway Company, Intervenors as their interests may appear.

BY THE COMMISSION -

O P I N I O N

This proceeding arises from the complaint of the Certificated Highway Carriers, Inc., alleging (1) that defendant has been, and is now charging rates for the transportation of property between Los Angeles and San Diego less and/or different than the rates contained in his tariff on file with the Commission, and (2) that the rates contained in said tariff are unjust, unreasonable, insufficient and noncompensatory. Defendant denies the allegations of the complaint.

A public hearing was had before Examiner Brown at Los Angeles, on April 3, 1934.

In October, 1931, defendant, an individual doing business under the fictitious name of San Diego Forwarding Company, commenced transporting property as a common carrier from Los Angeles to San Diego. Shipments were picked up at the store door of the consignor at Los Angeles by a local drayage concern employed by defendant, hauled to the terminal of The Atchison, Topeka &

Santa Fe Railway Company, loaded into a freight car of the railroad, transported to San Diego, and delivered by a local drayman employed by defendant to the store door of the consignee at San Diego. Defendant issued through bills of lading and held himself out to the general public to perform a through store-door-to-store-door service. His method of operation constituted that of an express corporation. (In Re Investigation of Frost Fast Freight Service, 31 C.R.C. 668). Defendant now operates in the same manner, with the exception that deliveries at San Diego are made with his own trucks.

When defendant first started his operations he filed a tariff with this Commission purporting to name class rates, and a limited number of commodity rates, between Los Angeles and San Diego. The tariff was not accepted for filing, as it did not comply with the Commission's rules relating to the construction of tariffs. Thereafter, on November 12, 1931, defendant tendered for filing Tariff C.R.C. No.1, which contained commodity rates of 40 cents[1] on uncrated furniture, 60 cents on luggage, 40 cents on ranges, and 35 cents on all other merchandise. This tariff was accepted for filing and became effective December 15, 1931. On December 14, 1931, another tariff, designated Tariff C.R.C. No.2, was tendered for filing. This tariff named commodity rates on crated furniture, household goods, luggage and ranges and a scale of class rates governed by the Consolidated Freight Classification. Defendant was not a party to the Consolidated Freight Classification. The tariff was defective in other respects and for these reasons it was rejected.[2] In lieu of this tariff defendant filed, effective

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[1] All rates herein are stated in amounts per 100 pounds.

[2] Defendant was notified by letter the reasons for the rejection of the tariff (File 302-E, December 16, 1931).

February 15, 1932, a tariff also designated as Tariff C.R.C. No.2, which contained commodity rates of 28½ cents on certain iron and steel articles,[3] 60 cents on luggage, 40 cents on ranges and 35 cents on merchandise, not otherwise specified, (except explosives). This tariff was supplemented[4] to provide a rate of 50 cents on tanks, iron or steel, gasoline, and on gasoline pumps, and a rate of 75 cents on uncrated furniture. Other supplements to Tariff C.R.C. No.2 were issued, as well as Tariff C.R.C. No.3, all of which were rejected for various reasons.[5]

Effective April 2, 1934, defendant issued a new tariff (C.R.C. No.4), naming specific commodity rates ranging from 28½ cents to 75 cents.

Thus, during the period extending from the inception of defendant's operation until February 15, 1932, defendant's filed rates were 40 cents on uncrated furniture, 60 cents on luggage, 40 cents on ranges, and 35 cents on all other commodities handled. During the period extending from February 15, 1932, until April 4, 1934, the only rates lawfully in effect were 28½ cents on iron or steel articles, as heretofore named, 60 cents on luggage, 40 cents on ranges, 50 cents on iron or steel tanks and gasoline pumps, 75 cents on uncrated furniture, and 35 cents on all other commodities transported. The 50-cent and 75-cent rates became effective May 6, 1932. All of the rates lawfully in effect included a pickup service within a radius of seven miles from Fifth Street and Central Avenue, Los Angeles, and delivery service within a radius of three miles from the foot of Market Street, San Diego.

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[3] Castings, loose; pipe; conduit; bolts; nails; and iron and steel articles not finished.

[4] Supplement No.2, effective May 6, 1932.

[5] In each instance defendant was notified of the reasons for the rejection of the supplements or tariff .

The evidence and defendant's own admission show that he has flagrantly disregarded his tariff. In the main, he has applied a rate of 28½ cents on all commodities classified 4th class, or lower, in the current Western Classification or current Exception Sheet,[6] and a rate of 35 cents on articles classified higher than 4th class. But these bases have not been consistently followed, as the record shows that rates higher than 35 cents have been applied on some commodities. Moreover, defendant has made absorptions of drayage charges for at least two shippers without any tariff authority for so doing. These two shippers are located in Vernon. When defendant first inaugurated his service to San Diego he picked up shipments in Vernon. This he was ordered to cease and desist from doing as the practice was found to be in violation of the Auto Truck Transportation Act. Coast Truck Line vs. C. J. Gamble, Decision No.26166 (July 17, 1933). Thereafter, defendant entered into the absorption arrangements with the Vernon shippers and thus accomplished indirectly what he was ordered to cease and desist from doing by Decision No.26166.

Defendant advanced several reasons for his malpractices, none of which is convincing that he was innocently operating in violation of law. He is not inexperienced in rate and tariff matters but on the contrary he has had a wide range of experience in this field.

Not only has defendant deviated from his tariff but he has also maintained a schedule of rates which are so ridiculously low that they created unfair competition with the existing carriers operating between Los Angeles and San Diego under the Commission's jurisdiction. Generally speaking, these rates are 28½ cents for 4th class, or lower, and 35 cents for commodities rated 1st, 2nd or 3rd class, or multiples of 1st class. The 28½-cent rate is

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[6] Defendant was never a participating carrier in either the Western Classification or the Exception Sheet.

below the out-of-pocket cost of service, but by maintaining this unduly low rate defendant can obtain a larger share of the higher class traffic than he would under the scale of rates maintained by his competitors. Thirty six and eight tenths percent (36.8%) of the traffic handled by defendant is first class, and 24.8% 2nd class, as contrasted with the traffic of the Motor Freight Terminal, of which 9.4% is 1st class and 7.1% is 2nd class. But even with a substantial volume of the higher grade traffic the overall scale of rates is not compensatory.[7] Defendant claims he is operating at a profit but his statement is unsubstantiated in the record. On the contrary, in a letter written to one of his employees, he stated: " * * * this business, as you should know, is no gold mine and for months has not made expenses.[8] Last month alone I dug down in my own pocket to pay out $268.73, * * *."

In addition to defendant there are four common carriers operating under the Commission's jurisdiction between Los Angeles and San Diego. These carriers are The Atchison, Topeka & Santa Fe Railway, Motor Freight Terminal, Coast Truck Line and California Merchants Association, Ltd. The class rates of all four carriers are 56½ cents first class, 42½ cents second class, 35½ cents third class and 28½ cents fourth class. These rates had their origin in the class rates originally established by The Atchison, Topeka & Santa Fe Railway years ago and modified by various general increases and reductions.[9]

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[7] This is clearly shown by Exhibit No.9 offered by complainant.

[8] December, 1933.

[9] 25% increased effective June 25, 1918 (General Order No.28 of the Director General of Railroads); 25% increase effective August 26, 1930 (In Re Application of A.T. & S.F. Ry., et al., 18 C.R.C. 646); and a 10% reduction effective July 1, 1922, (Reduced Rates 1922, 68 I.C.C. 676).

The Atchison, Topeka & Santa Fe Railway rates were originally non-intermediate in application to meet water competition, authorized by this Commission In Re Application of A.T. & S. Fe Railway, Decision No.3437 (June 19, 1916), 11 C.R.C. 368, and are thus presumptively depressed rates. Until December 7, 1931, they applied only from depot to depot. Effective on this date The Atchison, Topeka & Santa Fe Railway inaugurated a store-door pickup and delivery service between Los Angeles and San Diego and adopted the depot to depot rates as the store-door rates. For the service performed the rates are clearly less than maximum reasonable rates, yet defendant is maintaining a scale of rates so much lower than these depressed rates that by any standard of reasonableness they are absurd.

Transportation conditions in this state are demoralized enough without the regulated carriers adding to the demoralization. Instability in transportation is not in the public interest (In Re Investigation on Commission's Own Motion into the Operations of Transportation Systems, 38 C.R.C.). Nor should shippers be permitted to retain charges which are illegally accorded by a carrier (In Re Investigation of Allen Bros. et al., 37 C.R.C. 747), for the shipper is charged with a knowledge of what the tariff contains (C. & A. R.R. v. Ruby, 225 U.S. 155, Western Transit Co. v. Ledie & Co., 242 U.S. 448; United States v. Standard Oil Co. of Indiana, 155 Fed. 305; Beatrice Creamery Co. v. C.B. & Q. R.R., 107 I.C.C. 568; Givens v. L. & N. R.R.Co., 140 I.C.C. 605, 606).

From the record herein we are of the opinion and so find:

1. That defendant has assessed and collected for the transportation of property from or to San Diego rates less and/or different than those contained in its effective tariffs on file with the Commission in violation of Section 17(a) of the Public Utilities Act.

2. That defendant be ordered to immediately cease and desist and thereafter abstain from applying, demanding or collecting rates less or different than the rates contained in its tariff on file with the Commission.

3. That the rates maintained by defendant for the transportation of property from Los Angeles to San Diego have been in the past, and are now, unduly and unreasonably low in violation of Section 13 of the Public Utilities Act.

4. That within twenty (20) days from the date hereof defendant be required to submit to the Commission for its approval a new tariff containing class rates[10] not less than 56½ cents first class, 42½ cents second class, 35½ cents third class and 28½ cents fourth class and such necessary commodity rates as may be approved by the Commission.

5. That concurrently with the filing of the foregoing tariff defendant be required to cancel in its entirety tariff C.R.C. No.4.

6. That defendant be required to forthwith proceed in good faith to collect all outstanding undercharges and refund all outstanding overcharges and not later than July 1, 1934, report, under oath, to this Commission, the amount of undercharges he has collected and the amount of overcharges he has refunded and if all undercharges have not been collected, then report in detail the proceedings taken, looking to their collection.

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[10] Due to the rates maintained by defendant's competitors, it is not possibly on this record to establish maximum reasonable class rates. However, there is no justification for defendant maintaining a lower scale of rates than his competitors (See In Re Matter of Suspension of Local Express Tariff of California Merchants Association, Ltd., Decision No.26458, October 26, 1933).

7. That upon the collection of the existing undercharges the Attorney for this Commission be directed to commence an action in the name of the People of the State of California for the recovery of penalties for the violation of Section 17(a) of the Public Utilities Act in an amount not less than the sum of the total undercharges so collected.

8. That defendant be placed upon notice that future violations of Section 17 of the Public Utilities Act will be subject to severe penalties (Re Chas. F. Kane, 31 C.R.C. 732), or the revocation of his operative right.

O R D E R

This proceeding having been duly heard and submitted, the Commission now being fully advised, and basing its order on the findings of fact and conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that Charles J. Gamble, operating under the fictitious name and style of San Diego Forwarding Company, be and he is hereby ordered and directed:

1. To immediately cease and desist and thereafter abstain from charging, demanding, collecting or receiving any charges for the transportation of property from or to San Diego greater or less or different than those shown in his tariff lawfully on file with the Commission.

2. To submit to the Commission for its approval, within twenty (20) days from the date hereof, a new tariff containing rates not less than those set forth in finding No.4 of the opinion which precedes this order, and to cancel in its entirety, concurrently with the effective date of the aforesaid tariff, his Local Freight Tariff No.4, C.R.C. No.4.

3. To forthwith diligently and in good faith proceed to collect and collect the amount of all outstanding undercharges and refund all outstanding overcharges, and not later than July 1, 1934, report to the Commission, under oath, the amount of undercharges he has collected and of overcharges he has refunded; and if all undercharges have not been collected and overcharges refunded, to report in detail the proceedings taken looking to their collection and refund.

IT IS HEREBY FURTHER ORDERED that the Attorney of this Commission be and he is hereby directed to commence an action in the name of the People of the State of California, in the Superior court of the State of California, in and for the County of San Diego, for recovery of penalties for the violations of Section 17(a) of the Public Utilities Act in an amount not less than the sum of the total undercharges.

Dated at San Francisco, California, this 16th day of April, 1934.

COMMISSIONERS.