

Decision No. 27754

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

J. H. BUCKMEYER,

Complainant,

vs.

BIRCH-SMITH STORAGE COMPANY,

Defendant.

Case No. 3774

F. D. R. Moore, for Complainant.

J. O. Smith, for 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 Brown at Los Angeles, May 3, 1934, 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 reparation 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 operation" (Section 21, Article XII of the Constitution; Section 71(a) of the Public Utilities Act.

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

Between April, 1932, and May, 1933, complainant stored in defendant's warehouse 453 drums of oil (55 gallons capacity), each drum measuring 12 cubic feet in size, weighing 465 pounds and having a value of \$35.75 per drum. Charges based on rates of 12½ cents per drum per month for storage, and 9 cents per drum for handling (including unloading), were assessed and collected. The rate lawfully applicable were 12 cents per drum per month for storage, 93 cents per drum for handling, and 69-3/4 cents per drum for unloading. Complainant was overcharged ½ cent per drum for storage which should be refunded.

The record shows that the charges lawfully in effect for handling and unloading were unreasonably high. Defendant was primarily engaged in the storage of furniture and at the time the drums of oil were stored no specific rates applied on this commodity. The applicable charges applied on merchandise N.O.S., and were apparently designed to cover the handling and unloading of light and bulky articles with a comparatively high value. However, at a subsequent date defendant established a rate of 32 cents per drum for handling (includes unloading).

Although complainant is seeking a waiver of the undercharges for handling to the basis of 9 cents per drum, the evidence does not justify a finding that a rate lower than 32 cents per drum was unreasonable.

On this record we find that the charges applicable for handling (includes unloading), were unjust and unreasonable to the extent they exceeded charges based on a rate of 32 cents per drum for handling (includes unloading). Defendant will be authorized to waive collection of all charges in excess of those herein found reasonable. We further find that complainant was overcharged $\frac{1}{2}$ cent per drum per month for storage. Defendant will be authorized to refund the overcharge.

O R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that defendant Birch-Smith Storage Company be and it is hereby ordered to cease and desist from demanding from complainant J. H. Buckmeyer charges for the storage, handling and marking of the lots of oil involved in this proceeding in excess of those herein found lawful.

IT IS HEREBY FURTHER ORDERED that defendant Birch-Smith Storage Company be and it is hereby authorized and directed to waive all charges outstanding against J. H. Buckmeyer for the handling (includes unloading), of the merchandise involved in this proceeding in excess of those herein found reasonable, and to pay to complainant as reparation all charges for storage in excess of the charges found applicable.

Dated at San Francisco, California, this 15th day of

June, 1934.

O. C. Kearney
Leon Whalley
W. J. Kim