

Decision No. 3775

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

INDIAN MOTORCYCLE COMPANY,  
Complainant,

vs.

BIRCH-SMITH STORAGE COMPANY,  
Defendant.

Case No. 3775

F. D. R. Moote, 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 reparation" (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 October, 1950, and July, 1953, complainant stored in defendant's warehouse 274 motorcycles, each motorcycle measuring 50 cubic feet in size, weighing 550 pounds and having a value of approximately \$270.00. Charges based on rates of 50 cents per motorcycle per month for storage, and \$1.00 per motorcycle for handling were assessed and collected. The rates lawfully applicable were 50 cents per motorcycle per month for storage, \$1.10 per motorcycle for handling and 32½ cents per motorcycle for unloading. There was no overcharge for storage. Our findings will relate entirely to the handling and unloading charges.

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 motorcycles were stored no specific rates were in effect. The applicable charges applied on merchandise N.O.S., and were apparently designed to cover the handling and unloading of light, bulky and fragile articles. However, at a subsequent date defendant established a rate of 55 cents per motorcycle for handling (includes unloading). The subsequently established

handling rate is generally applicable to all warehouses in Los Angeles for the handling of articles of the weight and density of the motorcycles stored by complainant. Although complainant is seeking a waiver of the undercharges for handling to a lower basis, the evidence does not justify a finding that a rate lower than 55 cents 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 rate of 55 cents per motorcycle. Defendant will be authorized to waive collection of all charges in excess of those herein found reasonable.

ORDER

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 Indian Motorcycle Company charges for handling and unloading of motorcycles involved in this proceeding in excess of those herein found reasonable.

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 Indian Motorcycle Company for the warehousing of the merchandise involved in this proceeding in excess of those herein found reasonable.

Dated at San Francisco, California, this 15<sup>th</sup> day of

June, 1954.

W. J. Linn  
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W. J. Linn  
W. J. Linn  
W. J. Linn  
COMMISSIONERS.