

Decision No. 22165

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HARLEY-DAVIDSON MOTOR COMPANY,
Complainant,

vs.

BIRCH-SMITH STORAGE COMPANY,
Defendant.

Case No. 5776

F. D. R. Looze, for Complainant.

J. C. Smith, for Defendant.

ORIGINAL

BY THE COMMISSION -

C 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 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 October, 1930, and May, 1933, complainant stored in defendant's warehouse 315 drums of oil (54 gallons capacity), and 377 motorcycles. The drums measured 12 cubic feet in size and weighed 462 pounds. The motorcycles measured 50 cubic feet and weighed 550 pounds. On the drums charges based on rates of 12½ cents per drum per month for storage, and 46½ cents per drum for handling were assessed and collected. Charges on the motorcycles were based on rates of 50 cents for storage and \$1.00 for handling. The rates lawfully applicable on the oil were 12 cents per drum per month for storage, 93 cents per drum for handling, and 69-3/4 cents per drum for unloading. The effective rates on each motorcycle were 50 cents per month for storage, \$1.10 for handling and 82½ cents for unloading. The applicable charges applied on merchandise N.O.S. There were no specific rates on oils or motorcycles. Complainant was overcharged ½ cent per month for the storage of the oils which should be refunded. There was no overcharge or undercharge for the storage of the motorcycles.

By Decision No.27154, in J. H. Buckmeyer v. Birch-Smith Storage Company, the Commission found that handling (includes unloading), rates on oil in drums, substantially the same size and capacity stored by complainant, were unreasonable to the extent they exceeded 32 cents per drum for handling. And by Decision No.27156, in Indian Motorcycle Company v. Birch-Smith Storage Company, it was held that the handling rate on motorcycles of the same size and weight stored by complainant was unreasonable to the extent it exceeded 55 cents per motorcycle. The instant case was submitted on the records made in Cases 3774 and 3775, supra.

On this record we find that the handling (includes unloading), charges applicable on oils, in drums, and motorcycles were unjust and unreasonable to the extent they exceeded charges based on rate of 32 cents per drum for oil, and 55 cents per motorcycle. Defendant will be authorized to waive collection of all charges in excess of those herein found reasonable. We further find that complainant was overcharged $\frac{1}{2}$ cents per drum per month for the storage of oils in drums.

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 Harley-Davidson Motor Company charges for the storage and handling of the drums of oil and for the handling of motorcycles 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 Harley-Davidson Motor Company for the handling of the merchandise involved in this

proceeding in excess of those herein found reasonable and to refund to complainant as reparation all charges collected in excess of those found applicable under the effective tariffs.

Dated at San Francisco, California, this 18th day of

June, 1934.

C. L. J. J. J.

Leon O. Whiteley

W. L. J. J. J.

Commissioners.