

Decision No. 27459.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WILLIAMSON CANDY COMPANY,
Complainant,
vs.
MOTOR FREIGHT TERMINAL COMPANY,
Defendant.

Case No. 3837.

ORIGINAL

F. W. Mott, for complainant.

Wallace K. Downey, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant alleges that the charges assessed and collected by defendant for the transportation from Los Angeles to San Diego during the period June 10, 1932, to and including September 9, 1932, of various shipments of candy were unjust, excessive and discriminatory, in violation of the Public Utilities Act.¹ Reparation only is sought.

A public hearing was had before Examiner Brown at Los Angeles.

Charges were assessed and collected on complainant's shipments on basis of a rate of 55 cents per 100 pounds, which at the time the shipments moved was defendant's applicable fourth class rate.² There

¹ Defendant is not subject to the Public Utilities Act. The allegations if sustained would constitute violations of the Auto Truck Transportation Act, Chapter 213, Statutes 1917.

² Pages 31 and 49 and Items 105 and 370 of Motor Freight Terminal Company Local Freight Tariff No. 7, C.R.C. No. 7.

was in effect concurrently in Tariff 14815-B, C.R.C. 670 of The Atchison, Topeka and Santa Fe Railway Company and previous issues thereof a fourth class rate of 28½ cents per 100 pounds applying for the transportation of candy from Los Angeles to San Diego over the line of The Atchison, Topeka and Santa Fe Railway Company. It is on this lower rate concurrently maintained by The Atchison, Topeka and Santa Fe Railway Company that complainant rests its case.

Defendant compares the assailed rate of 55 cents applying for a distance of 126 miles with the fourth class rate of 40 cents then and now in effect from Los Angeles to Santa Barbara, a distance of 112 miles over what is said to be less severe operating territory. It points out that candy ordinarily is a second class commodity,³ rateable at fourth class only by virtue of an exception to the applicable classification. The second class rate from Los Angeles to San Diego at the time was 70 cents. The cost of operation between these points is said to be \$12.16 per ton, or approximately 61 cents per 100 pounds.

Effective March 23, 1933, defendant for competitive reasons reduced its rates to the volume of those maintained by The Atchison, Topeka and Santa Fe Railway Company and its other competitors. However, by Decision 27174 of June 25, 1934, In the Matter of the Investigation of rates, etc., of The A.T. & S.F. Ry. Co. et al., the Commission found that these rates were clearly less than reasonable and ordered that they be increased by 10 cents per 100 pounds. In ordering this increase it was stated that measured by the usual standards the resulting rates would still be below maximum reasonable rates.

As heretofore stated, complainant relies solely on the fact that there was in effect concurrently via the line of a competing carrier a rate of the volume of that here sought. Aside from the mere

³ Western Classification No. 62, C.R.C. No. 517 of F. W. Gomph, Agent, and Monroe's Ship-by-Truck Classification No. 4, C.R.C. No. 7.

allegation that the services of the two lines are comparable, it offered no supporting evidence.

In complaint proceedings the burden of proof rests upon complainant. This burden has not here been sustained. The complaint should be dismissed.

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that the above entitled proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 22^d day of October, 1934.

Leon C. Whittell

W. H. C. C.

W. B. C.

W. H. C.

W. H. C.

Commissioners.