

Decision No. 27726

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BIRD & SON SALES CORPORATION,<sup>1</sup>  
Complainant,

vs.

PACIFIC COMMERCIAL WAREHOUSE, INC.,  
Defendant.

ORIGINAL

Case No. 3814.

McCutchen, Olney, Mannon & Greene, Allan P.  
Matthew and John O. Moran, for complainant.

Morrison, Hohfeld, Foerster, Shuman & Clark,  
for defendant.

BY THE COMMISSION:

O P I N I O N

This case is an aftermath of In Re Allan Brothers, Inc. et al., Decision No. 25024, dated August 1, 1932, in which the Commission, finding that certain warehousemen in Los Angeles and vicinity, including the defendant here, had been departing from their tariffs, ordered such warehousemen promptly to proceed to collect all undercharges. The complainant as one of the customers of defendant which has been charged off-tariff rates and which now claims that the tariff rates were unreasonable and discriminatory to the extent they exceeded the charges voluntarily established by defendant as of October 1, 1932, asks the Commission to authorize the waiving of the undercharges. The defendant admits the material allegations of the

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<sup>1</sup> Changed to Bird Floor Covering Sales Corporation.

complaint and joins in the prayer for relief.

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 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.)

Rates will be stated in cents per 100 pounds. The matter was submitted on the so-called shortened procedure plan.

The memoranda of facts and arguments as submitted in the record are briefly as follows:

Defendant is seeking payment from complainant of undercharges amounting to \$3,723.93 covering shipments of linoleum or similar rugs and floor coverings stored by complainant in the warehouse of defendant at Los Angeles from time to time during the period between January 1, 1930, and September 1, 1932. It is alleged and defendant admits that such rates and charges were unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, to the extent that they exceeded lower rates and charges voluntarily established contemporaneously with identical reductions by all other warehouses in the Los Angeles area and made effective by defendant on October 1,

1932,<sup>2</sup> in its Tariff 7-B, C.R.C. No. 15; that by application of such reduced rates and charges the outstanding undercharges would be reduced to a total of \$1,632.16<sup>3</sup>; that the values of the rugs and floor coverings stored were comparatively low; that the said reduced rates and charges were maintained during the period of approximately one and one half years thereafter; and that no other reductions applicable to linoleum had been made by defendant within a period of five years prior to October 1, 1932.

While the waiver of the undercharges here sought is based upon the rates established on October 1, 1932, it is apparent that those rates are less than maximum reasonable rates for the service rendered. The aforesaid rates were published as storage and handling rates and included unloading, sorting and delivery by serial or pattern number. This method of publication was done for competitive reasons (W. & J. Sloane vs. Union Terminal Warehouse, 33 C.R.C. 752). On March 9, 1934, defendant, in conjunction with other warehouse utilities in Los Angeles, filed an application with the Commission (63-9770) whereby authority was sought to publish separate charges for sorting and delivery by serial or pattern number, in addition to the storage and handling charges then in effect. Upon the showing made in this application the Commission authorized the publication of the sorting and delivery by serial or pattern number charges, which resulted in higher aggregate charges for the service rendered.

There is no justification on this record for permitting the waiver of any undercharges on a basis lower than the aggregate charges

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<sup>2</sup> A corresponding reduction in rates was made, effective October 1, 1932, and was maintained during the same period, by all other warehouse companies in Los Angeles metropolitan area.

<sup>3</sup> Items amounting to about \$117.00 are barred by the statute of limitations.

found justified by the Commission in response to defendant's application heretofore referred to.

O R D E R

This matter having been duly submitted,

IT IS HEREBY ORDERED that defendant, Pacific Commercial Warehouse, Inc., be and it is hereby ordered to cease and desist from demanding from complainant Bird & Son Sales Corporation (Bird Floor Covering Sales Corporation) for the storage, handling, sorting and delivery by serial or pattern number of the merchandise involved in this proceeding, rates in excess of those now published by defendant in California Warehouse Tariff Bureau Tariff No. 7-B, C.R.C. No. 57.

IT IS HEREBY FURTHER ORDERED that defendant, Pacific Commercial Warehouse, Inc., be and it is hereby authorized and directed to waive all outstanding undercharges against complainant, Bird & Son Sales Corporation (Bird Floor Covering Sales Corporation), for the storage, handling, sorting and delivery by serial or pattern number of the merchandise involved in this proceeding in excess of the charges accruing at the rates referred to in the preceding paragraph.

Dated at San Francisco, California, this 4th day of February, 1935.

Leon A. White  
M. J. Quinn  
M. B. Lewis  
Walter H. Moore  
Frank R. DeWitt  
Commissioners.