

Decision No. 28251.

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, by John O. Moran,  
for complainant.

Morrison, Hohfeld, Foerster, Shuman & Clark, by  
Forrest A. Cobb, for defendant.

BY THE COMMISSION:

O P I N I O N

By Decision No. 27726 of February 4, 1935, in the above entitled proceeding the Commission authorized defendant to waive all undercharges it has outstanding against complainant for the storage, handling, assorting and delivery by serial or pattern number of shipments of linoleum or similar rugs and floor covering involved in this proceeding in excess of the charges accruing at rates in effect on and after March 31, 1934.

Complainant filed a petition for reconsideration and reversal of the Commission's decision following which the proceeding was reopened for oral argument which was had before Examiner Freas at San Francisco September 4, 1935.

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

Defendant has outstanding against complainant for the warehousing at Los Angeles of linoleum and similar rugs or floor coverings during the period January 1, 1930, to September 1, 1932, charges amounting to \$3,723.93. Complainant seeks to have these charges reduced to \$1,632.16, of which amount approximately \$117.00 is now barred by the Statute of Limitations. The \$1,632.16 is obtained by recalculating the charges on basis of rates voluntarily established by defendant in California Warehouse Tariff Bureau Tariff 7-B, CRC No. 57, effective October 1, 1932. By its original decision the Commission authorized defendant to waive all charges outstanding in excess of those that would have accrued on basis of rates established in this same tariff, effective March 31, 1934. These rates are the same as those established October 1, 1932, in so far as storage and handling is concerned. Under the 1934 rates however there is an additional charge for assorting and delivery by serial or pattern number; under the 1932 tariff this charge is included in the storing and handling rate. Authority to make this additional charge was granted by the Commission<sup>2</sup> upon the representation that the National Industrial Recovery Act in order to effectuate its policy of "reducing unemployment, improving standards of labor, establishing reductions in working hours, eliminating practices inimical to the interests of the public, employers and employees, removing from industry any existing obstructions to the free flow of commerce and thereby increasing purchasing power, to bring wages paid industry to such levels as are necessary for the highest standards of living obtainable, and to restore to members of industry their income on a level to make possible the payment of such wages",

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Applications 15-18626 and 63-9770 of March 21, 1934.

has brought about substantially increased operating costs.

Complainant argues that the increases of March 31, 1934, are attributable entirely to advances under the Code of Fair Competition and contends that to take these rates as a standard of reasonableness would have the effect of establishing retroactively a standard which did not exist during the time the shipments here involved were stored. The additional charges, it represents, are not for services heretofore performed gratuitously, but are merely separately published charges for services formerly included in the storage and handling rates. Complainant moreover points to the low value of the commodity and to the fact that the low rates were established voluntarily by all warehouses in the Los Angeles area and maintained until the Warehouse Code became operative.

Defendant joins complainant in its request that to the extent the outstanding undercharges exceed those that would have accrued on basis of the rates in effect during the period October 1, 1932, to March 31, 1934, the date the increases established because of the Code requirements became effective, such undercharges be waived.

Upon further consideration of the record in the light of the oral argument we believe that defendant should be authorized to waive the collection of the charges outstanding in excess of those that would have accrued on basis of the rates established October 1, 1932. The remainder of the outstanding undercharges should be collected forthwith.

#### O R D E R

Oral argument in this matter having been had, and the Commission being fully advised,

IT IS HEREBY ORDERED that defendant Pacific Commercial Warehouse Inc. be and it is hereby authorized and directed to cease and desist from demanding from complainant Bird & Son Sales Corporation (Bird Floor Covering Sales Corporation), for the storage, handling, assorting and delivery by serial or pattern number of the merchandise involved in this proceeding rates in excess of those established by defendant effective October 1, 1932, in California Warehouse Tariff Bureau Tariff No. 7-B, CRC 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, assorting 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 30th day of September, 1935.

*John Whittell*  
*W J Cur*  
*M B Cur*  
*Walter Cur*  
*Frank Cur*