

Decision No. 38601

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Humboldt Malt & Brewing Company,
a corporation,
Complainant,
vs.
Northwestern Pacific Railroad Co.,
Southern Pacific Company,
Defendants.

Case No. 4218

A. L. Whittle and J. J. Geary, for Northwestern Pacific
Railroad Co. and Southern Pacific Company
R. T. Boyd, for California State Brewers Institute
Ralph Schmitt, for Safeway Stores
David Livingston and Jos. P. Martini, on behalf of
Hugh K. McKeivitt and Livingston & Livingston, for
Humboldt Malt & Brewing Company

BY THE COMMISSION:

O P I N I O N

Humboldt Malt & Brewing Company seeks reparation on numerous carload shipments of beer transported from its plant at Eureka to San Francisco and Oakland by the Northwestern Pacific Railroad Company and the Southern Pacific Company, during the period April 20 to September 19, 1935. It alleges that charges assessed and collected by said defendants were unreasonable, discriminatory and in excess of the lawful tariff rates, in violation of Sections 13, 17 and 19 of the Public Utilities Act.

A public hearing was held before Examiner W. S. Johnson at San Francisco.

Charges were assessed at a rate of 17 cents, plus a 7 per

cent emergency charge.¹ Reparation is sought to the basis of 17 cents.

At the hearing, complainant and defendants stipulated (1) that the 17 cent rate was a non-intermediate rate and that it was established to meet the competition of coastwise vessel carriers, (2) that rates for the transportation of beer from other brewing points in California to San Francisco and Oakland were not subject to the 7 per cent emergency charge during the period here involved, and (3) that Informal Complaint No. 49501 might be considered as evidence in this case.² Aside from the foregoing stipulations, no evidence was introduced. Apparently complainant relied on the allegations of the complaint which, in substance, are that the 7 per cent emergency charge was applicable only because defendants had inadvertently failed to flag their tariffs to indicate that the line-haul rate had been established to meet water competition.³

Defendants denied having collected any overcharges in violation of their published tariff rates or that the collection of the additional 7 per cent emergency charge was discriminatory. They admitted, however, that the addition of such an amount was unreasonable, stating that it had since been eliminated in order to maintain the

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Rates are in cents per 100 pounds.

The 17 cent rate is published in Item 217 series, N.W.P. Tariff 38-J, C.R.C. No. 393, and in Item 860 series of Pacific Freight Tariff Bureau Tariff 16-P, C.R.C. No. 565. The 7 per cent emergency charge is provided in Part I of the Tariff of Emergency Charges No. 237, C.R.C. No. 567 of F. W. Gomph, Agent, and was made applicable to rates published in P.F.T.B. Tariff 16-P, by Special Supplement No. 3, effective April 18, 1935.

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In Informal Complaint No. 49501, defendants requested authority to pay Humboldt Malt & Brewing Company the reparation here sought. This request was denied.

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Rule 5 of the Tariff of Emergency Charges provides in part: "No emergency charge will be assessed in connection with carload rates established to meet truck or water competition (and so indicated in tariffs) ***".

previously existing rate relationship between breweries.

Although complainant and defendants stipulated that the 17 cent rate was established to meet water competition, the tariff items here in issue were not flagged to indicate the reason for publishing the rate. Consequently the published emergency charge of 7 per cent was lawfully assessed in connection with the foregoing rate.

Under Section 71(a) of the Public Utilities Act the Commission may award reparation only when it appears that the carrier has charged an "unreasonable, excessive or discriminatory amount". While complainant's allegation of unreasonableness was not denied by defendants, this allegation has not been substantiated by evidence of any kind.⁴ The published rate of 17 cents applying between Eureka on the one hand and San Francisco and Oakland on the other hand is non-intermediate in application. Even with the addition of the 7 per cent emergency charge, it is lower than rates for similar transportation from and to many intermediate points.

The fact that the 7 per cent emergency charge was not assessed against shipments transported from other brewing points to San Francisco and Oakland during the period it was applicable to similar traffic moving from Eureka to San Francisco and Oakland does not warrant a finding of unlawful discrimination. Evidence establishing the existence of similar circumstances and conditions from a transportation standpoint must be presented to sustain such a finding.

⁴

In Elden vs. Southern Pacific Company, 38 I.C.C. 530, defendants admitted the rate assailed was unreasonable and expressed willingness to make reparation. The Interstate Commerce Commission held that, "A mere willingness to pay reparation without evidence that the rate charged was unreasonable is not sufficient upon which to base an award of reparation."

Upon consideration of all the facts of record it must be concluded that the charges assessed have not been shown to be in-applicable, unreasonable or discriminatory. The complaint will be dismissed.

O R D E R

This matter having been duly heard and submitted,

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

Dated at San Francisco, California, this 7th day of ~~January~~ February, 1938.

Arthur M. Brown
Leon C. White
Frank R. Allen

W. L. Cline
Commissioners.