

Decision No. 31607

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment of maximum or minimum, or maximum and minimum rates, rules and regulations of all Radial Highway Common Carriers and Highway Contract Carriers operating motor vehicles over the public highways of the State of California, pursuant to Chapter 223, Statutes of 1935, for the transportation for compensation or hire of any and all commodities and accessorial services incident to such transportation.

Case No. 4088

In the Matter of the Investigation and Establishment of rates, charges, classifications, rules, regulations, contracts and practices, or any thereof, of Common Carriers of property.

Case No. 4145

BY THE COMMISSION:

OPINION AND ORDER ON REHEARING

Upon petition of Certificated Highway Carriers, Inc., The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northwestern Pacific Railroad Company and The Western Pacific Railroad Company, and after public hearing, the Commission issued Decision No. 31309, of September 26, 1938, in the above entitled proceedings, interpreting rules contained in several outstanding minimum rate orders relating to the classification of commodities for which two or more ratings, subject to different packing requirements, are provided in the Western Classification or Pacific Freight Tariff Bureau Exception Sheet. ¹ By petition filed October 6, 1938,

¹
In addition to interpreting the rules in question, the Commission revised the controversial wording in the hope of eliminating future misunderstandings. Certain other matters, not here involved, were also disposed of in the decision.

Certificated Highway Carriers, Inc., sought a rehearing and oral argument in connection with said matter. Oral argument on the petition was heard by the Commission en banc at San Francisco on October 31, 1938, with the understanding that such argument would be deemed to constitute the rehearing should the Commission conclude that the petition should be granted.² It is concluded that the points raised at the oral argument justify the granting of a rehearing and, therefore, the following will be deemed to constitute our opinion on rehearing.

In the minimum rate orders in question, the provision has been made that articles will be subject to the ratings, but not the packing requirements, of the Western Classification and Pacific Freight Tariff Bureau Exception Sheet. In addition, the following rule is uniformly contained in said minimum rate orders:

"If two or more ratings are provided for an article in the form in which it is shipped (e.g., set up or knocked down, nested or not nested, compressed or not compressed, folded flat or not folded flat), subject to different packing requirements, the lowest of such ratings will apply."³

Soon after the above rule was issued, there arose the question as to its interpretation in its application to packaged goods in relation to the same commodities in bulk; for example, does

2

It was also understood that the oral argument would be given consideration by the Commission in issuing the decision in Case No. 4246, in re Rates of All Common and Highway Carriers.

3

The rule in question was first promulgated in Decision No. 29480 of January 25, 1937, in Part "W" of Case No. 4088 and Part "B" of Case No. 4145, naming rates for the transportation of general merchandise within southern California. It was subsequently adopted in Decision No. 30021 of August 9, 1937, in Case No. 4088, Part "K", Case No. 4135 and Case No. 4139, involving transportation in the so-called San Diego drayage area; in Decision No. 30370 of November 29, 1937, in Case No. 4088, Parts "U" and "V", and Case No. 4145, Parts "F" and "G", covering rates for the transportation of general merchandise, in quantities of 20,000 pounds and less within central and northern California and between Part "M" territory on the one hand and central California territory on the other hand; and in Decision No. 30785 of April 11, 1938, in Case No. 4121, establishing rates for transportation in the so-called Los Angeles drayage area.

"whiskey in glass," rated first class L.C.L. in the Western Classification take the same rate as "whiskey in bulk in barrels," rated second class L.C.L., on the ground that the form of the article remains the same and the glass and barrels constitute packing requirements? By letter dated May 12, 1938, the Commission expressed an informal opinion on this question in the affirmative, saying that the liquid form of the commodity is unchanged, whether packed in glass, metal cans, or in barrels.

Shortly thereafter Certificated Highway Carriers, Inc., and the rail lines filed the petitions here involved, asking that the Commission render a formal interpretation of the rule, and the Commission, after hearing, rendered its Decision No. 31309, above mentioned. In interpreting the rules therein, the Commission said, on page 7 of the printed decision:

"It appears manifest that the wording employed in the rules involved is consistent with the evident intent that packing requirements of any kind whatsoever are to be disregarded for rating purposes. As before pointed out, the controversial provision is employed in conjunction with a statement that articles will not be subject to the packing requirements of the Western Classification or Exception Sheet. Packing requirements are therefore not to be considered in determining the applicable rating. That inner containers, as well as outer containers, are 'packing' and when specified in connection with classification ratings are 'packing requirements,' is evident when it is noted that the packing of property in the type of inner container specified in connection with the rating therefor is a prerequisite to the application of the particular rating and penalties are sometimes provided when another form of inner container is used. Consequently, neither outer containers nor inner containers are to be considered in applying minimum rates on any given article of merchandise under the rules here in issue. It follows that the phrase 'form in which it (the article) is shipped' must relate, not to the form of packing, but to the shape and structure of the property itself."⁴

The instant petition for rehearing seeks modification of this interpretation.

⁴ The same interpretation was placed upon the rule by the Commission in its Decision No. 30961, In Re Rates on Drugs.

Upon reconsideration of the record in this proceeding in the light of the oral arguments, we are led to the conclusion that the prior formal and informal interpretations are incorrect. The rule when properly construed gives effect to variations in ratings and rates on a given article, based on differences in the "form in which it is shipped," but does not give effect to packing requirements or variations in ratings, rates, and charges, based on the type of shipping container or packing in which the article in such form is offered for shipping. The rule thus draws a marked distinction between an "article in the form in which it is shipped" and "packing requirements" applying to the article in that form.

The rule indicates in part what is meant by article "in the form in which it is shipped" by express illustrations thereof, "e.g., set up or knocked down, nested or not nested, compressed or not compressed, folded flat or not folded flat." Thus, according to the rule, an article when set up is in a different form than the same article when knocked down. Similarly, the form of the same articles differ when nested or not nested, compressed or not compressed, folded flat or not folded flat. These are only illustrations used in the rule and are not intended to nor do they determine all the conditions which change the form of the article. As applied to whiskey, the commodity largely discussed in the record, we are of the opinion that the form in which whiskey is shipped is quite different when "in glass" from when "in bulk in barrels." In the one case the "article in the form in which it is shipped" is the bottle of whiskey; in the other, it is the barrel of whiskey. The rule contemplates and requires that variations in ratings and rates between whiskey in glass and whiskey in barrels be given effect, but permits carriers' requirements, if any, respecting the outer cover containing, separating, or protecting the articles to be ignored.

To state the distinction in general terms, the form in which an article is shipped relates to the form or manner in which an article or commodity is prepared or "put up" for commercial handling or marketing, either as demanded by trade or marketing practices or because of the desire or preference of the shipper. When a commodity is packaged or bottled, its form or character is different from that of the same commodity in bulk, at least so far as it relates to commercial handling and shipping. In principle, the conditions which require that a distinction be recognized between the form of an article when put up in packages and when in bulk are no different from the conditions which justify such a distinction between an article set up and the same article knocked down. The form in which an article is shipped may vary similarly with the kind of inner container in which the commodity is packaged, as bottles, earthenware, cartons, or cans. In such cases the goods and their package constitute the article in a designated shipping form, and such form differs from that of the same goods in bulk.

In contrast with such considerations of form in which articles are shipped, which are controlled by shipper's preference or marketing conditions, are the requirements of the carriers respecting the outer packages or shipping containers in which the articles are packed, or the absence of such requirements. These constitute packing requirements. Generally, the packing requirements for packaged goods in bottles, earthenware, cans, etc. are that they must be shipped in barrels or boxes and for the same goods in bulk form, that they be shipped in barrels.

The confusion as to whether, under the rule in question, a packaged article is entitled to the rating of the same article in bulk largely arises from misinterpreting descriptions of the form of articles in the classification and exception sheet as packing requirements. Thus, when the classification refers to liquids "in glass," the term

"in glass" identifies the form of the shipment, and is not part of the carrier's packing requirements, they being that the bottled liquids be placed in barrels or boxes.

This conclusion is supported by the wording of Section 1 of Rule 5 of the Western Classification, reading in part as follows:

*Rule 5, Section 1.

* * * "Where packing specifications are not provided, articles will be taken in any form of shipment, namely, 'loose' or 'in bulk,' or 'in packages' or 'on skids.'"

"The separate descriptions of articles provide for acceptable forms of shipment. Definitions of containers and specifications for construction, packing and sealing thereof are contained in Rules 40 and 41, or in specific items. Containers must be such as afford reasonable and proper protection to contents. When the separate descriptions of articles provide for forms of shipment (other than in containers) or specific regulations for loading, bracing, securing, or tying, such requirements must be fully complied with." (Emphasis supplied).

To summarize, an article in the form in which it is shipped differs when in bulk from when packaged, and may also vary with the type or kind of package or inner container. The descriptions of such forms of shipment, however, do not constitute packing requirements.

It follows from the foregoing that Decision No. 31309 should be set aside, insofar as it involves the interpretation and modification of packing rules.

ORDER

Rehearing having been held in the above entitled proceedings and reconsideration having been given to the decision of the Commission in Decision No. 31309 therein,

IT IS HEREBY ORDERED that said Decision No. 31309 be and it

is hereby set aside, insofar as it involves the interpretation and modification of packing rules contained in minimum rate orders heretofore issued in these proceedings.

Dated at San Francisco, California this 27th day of December, 1938.

Raymond Q. [Signature]

Frank [Signature]

[Signature]
Commissioners