

Decision No. 33661

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
THE WESTERN UNION TELEGRAPH COMPANY)
for an order authorizing amendments)
to its rules pertaining to the terms)
and conditions under which messages)
are accepted for transmission, in)
the State of California.)

Application No.
23667

ORIGINAL

OPINION AND ORDER

The Western Union Telegraph Company, which operates a telegraph system in California and other states, requests authority to modify certain language of its filed rules and regulations relating to the utility's liability for damages for delay or non-delivery of telegrams, money orders, etc. No rate changes are proposed.

In litigation before the Federal Courts, it was first held that the existing language of one of these rules was intended to prescribe a definite liability by way of liquidated damages, rendering unnecessary any proof as to actual damages. (Nester v. Western Union, 25 F. Supp. 478; Western Union v. Nester, 106 F. (2d) 527.) However, this holding was reversed by the United States Supreme Court in Western Union v. Nester, 84 L. Ed. (Adv. Ops.) 711, the Court stating in part as follows:

"By its petition for certiorari the Telegraph Company presents a single question-- 'Does the limitation of liability provision in petitioner's money order tariff--which is substantially the same as that in its telegraph tariff--constitute a liquidated damage provision which would automatically make petitioner liable

for damages in the fixed sum of \$500, in case of default in service, regardless of whether or not the sender had sustained any actual damages, or is the provision rather one which fixes a maximum limit within which damages may be proved?

"We think the provision in question was not intended to prescribe a definite liability (liquidated damages), but is a limitation upon the maximum permissible recovery for actual loss or damage properly alleged and shown by evidence. The courts below erred in ruling otherwise."

The proposed rephrasing of the rules is consistent with the interpretation placed upon the present language by the Supreme Court, and the purpose is to clarify the intent of the existing rules and to remove any possible misunderstanding. For example, the second numbered paragraph which appears on the reverse side of the message forms now provides that the company shall not be liable "beyond the sum of five thousand dollars, at which amount each message is deemed to be valued, * * *." The utility desires to alter the quoted language to read as follows: "beyond the loss, not exceeding in any event the sum of five thousand dollars, at which amount the sender of each message represents that the message is valued, * * *." Analogous changes or additions are also proposed in the rules relating to money order, shopping order, and gift order service.

The Commission being of the opinion that a hearing is unnecessary, and that the requested authorization should be granted, IT IS ORDERED that The Western Union Telegraph Company may make effective on or before January 1, 1941, the tariff modifications set forth in Application No. 23667, provided the necessary rate sheets are filed with

the Commission not later than ten days immediately preceding their effective date.

This Order shall become effective on the twentieth day after the date hereof.

Dated, San Francisco, California, this 12th day of November, 1940.

Ray L. Rice
Stanley W. ...
Robert ...
...
Arthur J. Casner
Commissioners.