C.4490
C.4491
DH

Decision No. 34623

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

CHAS. BROWN & SONS, a corporation, and J. C. CONE AND MRS. J. C. CONE, doing business as CONE'S AUTOMOTIVE SUPPLY, Complainants, vs. VALLEY EXPRESS COMPANY, a corporation, Defendant.	Case No. 4490
CHAS. BROWN & SONS, a corporation, WALTON N. MOORE DRY GOODS CO. INC. a corporation, J. C. CONE AND MRS. J. C. CONE, doing business as CONE'S AUTOMOTIVE SUPPLY, Complainants, vs. PACIFIC MOTOR TRANSPORT COMPANY, a corporation, Defendant.	Case No. 4491

CRAEMER, Commissioner:

Appearances

Hugh Gordon, for complainants in each case.
Ware and Berol by Marvin Handler, for Valley Express Company, defendant in Case No. 4490.
R.E. Wedekind, for Pacific Motor Transport Company, defendant in Case No. 4491.

O P I N I O N

These proceedings were heard on a common record. They will be disposed of in one decision. By them complainants allege that defendants collected transportation charges at variance with their lawfully published and filed tariffs in violation of Section 17(a)2 of the Public Utilities Act.

The controversy arose over an interpretation of the minimum charge rules of Pacific Motor Transport Company's Tariff No. 9, C.R.C. No. 13, and Valley Express Company's Tariff No. 1-C, C.R.C. No. 5.[1] Although the provisions of these rules are not identical they are so nearly so that it is not necessary to consider each one separately. Rule No. 70-B of Pacific Motor Transport Company's Tariff No. 9, C.R.C. No. 13, reproduced below, is illustrative:

> "1. Except as otherwise provided herein, the minimum charge in connection with rates named in this tariff shall be:
>
> (a) If moving under class rates and classified 1st Class or lower, for 100 lbs. at the class rate applicable.
> (b) If moving under class rates and classified higher than 1st Class, for 100 lbs. at 1st Class rate.
> (c) If moving under commodity rates, for 100 lbs. at the commodity rate applicable.
> (d) If shipment contains different articles, for 100 lbs. at the highest rate applicable on any of the articles, but not more than for 100 lbs. at 1st Class rate.
>
> Exception. - In no case shall the minimum charge be less than 50 cents except as shown in connection with individual rate.
>
> "2. When a shipment moves under a rate made by combination of separately established rates named in this tariff, or of separately established rates named in this tariff with rates in other tariffs of this Company lawfully on file with the C.R.C., the minimum charge shall apply to the continuous through movement and not to each of the separately established factors. Where the separate factors are subject to different minimum charges, the highest minimum charge shall apply to the through movement."

On shipments moving under through rates from point of origin to point of destination there is no controversy. As specified in Paragraph 1, such shipments, where the tariff does not elsewhere otherwise provide, are subject to minimum charges computed on the basis of 100 pounds at the designated rates, but not less

---

[1] The rules in issue are 70-A and 70-B of Pacific Motor Transport Company's Tariff No. 9, C.R.C. No. 13, and 14 and 14-A of Valley Express Company's Tariff No. 1-C, C.R.C. No. 5.

than 50 cents. The question arises in connection with shipments on which combination rates are applicable.

Complainants contend and defendants deny that this rule, particularly the last sentence of Paragraph 2 thereof, provides that the minimum charge applicable to a shipment moving between given points between which combination rates are available is the highest minimum to which any factor in the combination is subject, and that if a lower charge can thus be obtained it must be used even though a through rate is specifically published. Illustrative of these positions is the following:

Property weighing 35 pounds, subject to first class rates, was transported from San Francisco to Redding by defendant Pacific Motor Transport Company. The first class rate specifically named in defendant's tariff between those points was $1.20 per 100 pounds, subject to a minimum charge of $1.20. Defendant's tariff also provided first class rate of 86 cents per 100 pounds from San Francisco to Marysville and 47½ cents per 100 pounds from Marysville to Redding, subject to minimum charges of 86 and 50 cents, respectively. Complainants contend for a charge of 86 cents, the "highest minimum charge" in the combination. Defendants maintain that the specifically named rate applies and that the minimum charge is $1.20.

More specifically, complainants urge that regardless of whether it is specifically named or made by combining separate factors, the applicable rate is that rate which produces the lowest charge. They rely upon provisions in defendants' tariffs reading as follows: "Whenever a CLASS rate and a COMMODITY rate are named between specified points, the lower of such rates is the lawful rate, unless some combination of class rates, or of commodity rates, or of class and commodity rates, makes a lower through

rate."[2] The term "rate" as used in this rule they say includes the minimum charge. Here they point to United States vs. Chicago & Alton Railway Company (212 U.S. 563) wherein the United States Supreme Court sustained the District Court for the Eastern District of Illinois which held "The word 'rate,' as used in the interstate commerce law, means the net cost to the shipper of the transportation of his property; that is to say, the net amount the carrier receives from the shipper and retains. In determining this net amount in a given case, all money transactions of every kind or character having a bearing on, or relation to, that particular instance of transportation whereby the cost to the shipper is directly or indirectly enhanced or reduced must be taken into consideration." Following their contention that combinations of separately established rates may be used complainants argue that Paragraph 2 clearly provides that the minimum charge shall apply to the continuous through movement and not to each of the separately established factors, and that where the separate factors are subject to different minimum charges, the highest minimum charge shall apply to the through movement. Where all factors are subject to identical minimum charges one charge, they contend, applies to the through movement. A witness for complainants testified that in many instances defendant Pacific Motor Transport Company had assessed charges on the basis here sought, and had distributed a circular soliciting traffic on that basis.

Defendants' position is that Paragraph 1 of the minimum charge rule applies to the through combination rate, that the minimum is the charge for 100 pounds at the aggregate of the separate factors of the combination, that the result thus obtained applies

---

[2] Rule No. 5 of Pacific Motor Transport Company's Tariff No. 9, C.R.C. No. 13, and Rules Nos. 1 and 5 of Valley Express Company's Tariff No. 1-C, C.R.C. No. 5, and Tariff No. 2, C.R.C. No. 4, respectively.

if it is not less than the highest minimum charge applicable to any separate rate factor, and that where the highest minimum charge applicable to a separate rate factor is greater than the charge thus determined, it applies. They construe the wording "the minimum charge shall apply to the continuous through movement" appearing in Paragraph 2 of the minimum charge rule, as referring to the minimum charge provided in Paragraph 1 and assert that this language does not permit separation of the factors of a combination rate to arrive at a lesser minimum charge. The phrase " and not to each of the separately established factors" immediately following the above quotation they say prohibits the use of the separate factors in arriving at the minimum charges, except in instances where a rate factor is subject to a higher minimum charge than that provided for the through combination rate. The rule is, for the most part, in the affirmative and the tariff compilers according to defendants added the wording "and not to each of the separately established factors" as a precautionary measure to prohibit what the complainants are here seeking and not to change the meaning of the rule thereby. In connection with the provision "Where the separate factors are subject to different minimum charges," defendants take the position that where all rate factors are subject to Paragraph 1 of the rule that paragraph provides but one minimum for all factors. They further insist that the provisions of the rule permitting the use of combination rates in lieu of through rates apply only in instances where the volume of the through rate is higher than the combination rates, and that in applying these provisions a minimum charge cannot be considered as a rate. They testified with respect to the intention of the framers, the history of the rule and the effect of the interpretation contended for by complainants.

That a rule which would have the effect imputed to it by complainants was not intended may not be gainsaid; nor may it be

disputed that complainants' construction results in a cumbersome tariff situation, and it may well be that in certain instances the resulting charges may be unreasonably low.

On the other hand the second paragraph of the rule says with reasonable clarity what complainants contend. The first sentence of Paragraph 2 provides that when combination rates are employed the minimum charge applies to the continuous through movement and not to each of the separate rate factors. Standing alone, it is clear that the minimum charge therein referred to could only mean the minimum charge provided in Paragraph 1. This interpretation, however, would disregard the last sentence of Paragraph 2 which reads: "Where the separate factors are subject to different minimum charges, the highest minimum charge shall apply to the through movement." Literally interpreted this sentence can only be construed as requiring application of the highest minimum charge of the separate rate factors to the through movement. If this is not what it means, then indeed its meaning is not apparent. To construe the rule as contended for by defendants would necessitate arbitrarily reading out of the rule the last sentence thereof.

Where the separate factors are subject to identical minimum charges, the rule is not entirely clear. However, in consideration of the rule as a whole and particularly of the last sentence of Paragraph 2 applying where the separate rate factors are different in volume, the first sentence should be interpreted as applying when the separate factors are of the same volume.

The rules of tariff interpretation here encountered are fundamental. Effect must be given to every word, phrase or sentence of the provision to be interpreted. If the language used is unambiguous there is no room for construction; the provision must be applied in accordance with the literal meaning of the words used. A provision

is not ambiguous merely because it may be complex or abstruse. Moreover it is well established that where two or more rates are provided for the same service the one which produces the lowest charge is applicable.[3]

Based upon the foregoing I conclude that the applicable rate is that rate which produces the lowest charge; that under the minimum charge rules considered in their entirety, the minimum charge applicable to the combination rate is the highest minimum applicable to any of the factors in the combination; that where the minimum charges applicable to the combination factors are of the same volume a minimum charge of that volume applies; and that the charges assessed on complainants' shipments exceed those applicable under the tariff. Upon proper proof that complainants paid or bore the charges on the shipments in question I find they are entitled to reparation with interest at six (6) per cent per annum.

The exact amount of reparation due is not of record. Complainants will submit to defendants for verification statements of the shipments made. Upon payment of the reparation, defendants will notify the Commission the amounts thereof. Should it not be possible to reach an agreement as to the reparation awards, the matter may be referred to the Commission for further attention, and the entry of a supplemental order should such be necessary.

The following form of order is recommended:

O R D E R

These cases being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

---

[3] See Celotex Co. vs. A.C.L.Ry. 179 I.C.C. 307, Genfire Steel Co., vs B.&A.R.R. 204 I.C.C. 285 and Marshfield Milling Co. Inc., vs C.& N.W.Ry. Co. 216 I.C.C. 236.

IT IS HEREBY ORDERED that upon proper proof that complainants paid or bore the charges on the shipments in question, defendants Valley Express Company and the Pacific Motor Transport Company be and they are hereby authorized and directed to refund, with interest at 6 per cent per annum, to complainants Chas. Brown & Sons, J.C. Cone and Mrs. J. C. Cone, doing business as Cone's Automotive Supply, and Walton N. Moore Dry Goods Company, all charges collected for the transportation of the shipments involved in these proceedings in excess of those accruing under the basis found lawful in the preceding opinion.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1941.

Commissioners