Decision No. 36051

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of L. C. FAUS.) Application No. 25071

BY THE COMMISSION:

ORIGINAL

Appearances

L. C. Faus, in propria persona.
Phillip S. Matthews and J. L. Roney, for S & W Fine Foods, Inc., interested party.

OPINION

In this proceeding the applicant seeks a determination by the Commission of the class rating applicable to the transportation by highway carriers of a commodity described in the application as "FRUIT PEEL: Lemon or Orange, wet, in bulk, loose, cold pack. Transported in a state of preservation for the purpose of further process and manufacture."

Public hearing on the application was had before Examiner Bryant at Los Angeles on September 17, 1942, at which time evidence was received and the matter was submitted for decision.

At the hearing it developed that this proceeding arose from a dispute between L. C. Faus (as trustee for a bankrupt highway carrier) and S & W Fine Foods, Inc., as to the charges applicable under established minimum rates for the transportation of several shipments from Pasadena to Redwood City between August 26 and November 5, 1940. Minimum rates for the transportation in question were those set forth in Highway Carriers' Tariff No. 2 (Appendix "D" to

Decision No. 31606, as amended, in Case No. 4246). Class rates named in this tariff were and are subject to ratings shown in the Western Classification, in the Exception Sheet, and in the tariff itself.[1]

Testimony was offered by Faus, by the traffic manager of S & W Fine Foods, Inc., by the president of California Consumers Corporation, and by rate experts of Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company, called as witnesses by S & W Fine Foods, Inc.

The pertinent facts as to the nature of the commodity, as they appear from the evidence of record, are these: the commodity consists of orange peel and lemon peel as it comes from the citrus juice cannery of California Consumers Corporation, together with whatever small residue of juice, core and connective tissue may remain after the juice has been removed from the fruit. The peel is in halves, or smaller broken pieces. A great part of this material is normally disposed of by dumping it into refuse pits, but certain quantities are sold by the cannery to purchasers who use it for the extraction of oils or for other purposes. Although there is some conflict in the record as to the price paid for the peel, both the seller and purchaser testified that the shipments here involved were sold f.o.b. the cannery at $2.50 per ton for the orange peel and $17.50 per ton for the lemon peel. This peel was transported in bulk, and was preserved during transit by crushed

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[1] During the latter part of 1940 the classification in effect was Western Classification No. 68, C.R.C.-W.C. No. 1 of R. C. Fyfe, Agent; and the effective Exception Sheet was Pacific Freight Tariff Bureau Exception Sheet No. 1-Q, C.R.C. No. 39 of J. P. Haynes, Agent. References to Western Classification and Exception Sheet in this opinion are to those respective publications, and item references herein are to items in those publications. Western Classification No. 68 has since been reissued, but Exception Sheet No. 1-Q is still in effect.

ice which was mixed with the peel by blowers as it was being loaded into the trucks. The ice was ordered and paid for by S & W Fine Foods, Inc., the consignee. Upon arrival at destination the material was shoveled directly into barrels, which were then filled with brine to preserve the commodity until it was ready to be processed. Later the unsuitable peel, said to consist of a little more than one-third of the material originally shipped, was culled out and thrown away.

Applicant testified that he had carefully examined the applicable Classification and Exception Sheet, and had determined that the commodity in question was not specifically described in either publication. He pointed out that Rule 17 of the Classification provides that when articles not specifically provided for are offered for transportation, carriers will apply the classification provided for articles which, in their judgment, are analogous. He compared the material here considered to frozen fresh fruit, to fresh watermelons, and to canned or preserved fruit; but said that in his judgment the material was most nearly analogous to citrus fruit peel, in brine, in barrels or in metal cans in boxes, for which a carload rating of 5th class was provided.[2] This witness called attention to an item of the Exception Sheet (Item 670) which provides a carload rating of Class E on "Fruit Peelings and Parings, not dried (cannery Refuse), in packages or in bulk," but said that in his opinion this rating could not be applied because the material in question was not "refuse." He referred to Webster's New International Dictionary of the English Language as authority for the statement that refuse is literally that which is refused or rejected; hence worthless, useless, and of no value.

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2 Item 13, page 174 of the Classification.

Other witnesses, on the other hand, testified that in their opinions the Exception Sheet rating was properly applicable. An assistant general freight agent of Southern Pacific Company said that the item had been published as long ago as 1907, and that it was intended from the beginning to apply to fruit peelings and parings moving from canneries to brandy distilleries. He stated that in his opinion the material here considered was unquestionably ratable as cannery refuse, regardless of the fact that the consignee might put it to some use. A chief rate clerk of The Atchison, Topeka and Santa Fe Railway Company concurred in this opinion, and the same conclusion was expressed by the traffic manager of S & W Fine Foods, Inc.

The problem here presented to the Commission resolves itself into the inquiry whether the material in issue, in view of its value, may be classified as cannery refuse. If this question is answered in the negative the analogy rule of the Classification must be brought into play, but if it is answered in the affirmative no reason appears on this record for questioning that the Exception Sheet rating applies.

"Refuse" generally is that which is rejected as worthless or useless. Standard lexicographers use "refuse" as synonymous with "waste." However, a material discarded as useless by one person may be of value to another, as, for example, kitchen waste discarded by the householder may be of value to the person engaged in feeding hogs. In Baltimore & O. R. Co. v. Carnegie Steel Co. (251 Fed. 682), the court held that rates provided for "waste refuse material" were properly applied to slag, a "refuse from metallic ores," although the slag was utilized by the railroad for ballast along its line.

The material considered in the instant proceeding, although frequently discarded by the juicing plant, was on other occasions sold to persons who had use for it. There appears to be little room for questioning that the discarded material is refuse, and we do not believe that a material which is refuse in some circumstances becomes a different commodity for classification purposes when a purchaser is found.

Upon consideration of all the facts and circumstances of record, we are of the opinion and find that the commodity hereinbefore described is, and was during the period from August 26 to November 5, 1940, properly classified within the commodity description set forth in Item 670 of Pacific Freight Tariff Bureau Exception Sheet No. 1-Q, C.R.C. No. 39 of J. P. Haynes, Agent.

Since applicant seeks merely a determination as to the rating applicable to the commodity in question, no order is necessary.

Dated at San Francisco, California, this 22nd day of December, 1942.

Justus F. Craemer

Franck R. Havenner

Richard Sachse

Commissioners