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Decision No. 38329

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CONSOLIDATED VULTEE AIRCRAFT CORPORATION,
Complainant,
vs.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE
SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY,
Defendants.

Case No. 4740

ORIGINAL

BY THE COMMISSION:

Appearances

V. O. Conaway, for complainant.
J. E. Lyons and Charles W. Burkett, Jr., for defendants.

O P I N I O N

Complainant alleges that certain charges assessed and collected by defendant railroads were in excess of those specified in the applicable tariffs, in violation of Section 17 of the Public Utilities Act. It seeks reparation in the amount of $901.17, plus interest.

Public hearing was had before Examiner Bryant in Los Angeles, briefs have been filed, and the matter is ready for decision.

The shipments in question consisted of some 23 carloads of internal combustion engines and other articles transported in 1941 from San Diego to Chula Vista and North Island. Complainant alleges, and defendants deny, that the charges assessed and collected for the transportation of these shipments were in excess of those specified in the applicable tariffs. It was stipulated, and the record shows,

that the shipments were made and the charges were paid and collected thereon as alleged; and that, if the allegations are otherwise sustained, the statute of limitations was properly tolled. The dispute arises purely as a result of conflicting interpretations of the tariffs.[1]

Defendant Atchison, Topeka & Santa Fe Railway Company performed only switching service, the charges for which are not in issue. Complainant agreed at the hearing to elimination of that carrier as a defendant.

The tariff dispute revolves around the question whether the line-haul class rates were or were not subject to a certain "minimum class scale." If the minimum scale was inapplicable, as contended by complainant, charges in excess of the tariff were collected and reparation is due; if the minimum scale was applicable, as contended by the line-haul defendant, the charges collected were those specified in the tariff, and the complaint should be dismissed.

The parties are in agreement concerning the classification ratings of the commodities and the "rate basis" applicable between the points. The rate basis is flagged, by appropriate reference mark, as "Subject to Items 180 and 275, but not less than minimum scale of Class Rates shown in Item 235." The quoted words are the

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[1] A preliminary question was raised by defendants' motions to dismiss the complaint. The original and the amended complaint were prepared and filed by three professional traffic representatives "as the duly authorized agents for complainant." Those persons admittedly were not licensed attorneys or members of the State Bar of California or of any other state. Defendants filed a written motion to dismiss the original complaint on the grounds that the preparation and filing thereof constituted the practice of law and that the filing by persons who were not members of the State Bar was a nullity and a violation of certain provisions of the Business and Professional Code of California. The motion was denied by the Commission prior to the hearing. An amended complaint having been filed thereafter, defendants moved orally at the hearing that the original and amended complaints be dismissed on the same grounds. The oral motion was denied by the examiner.

crux of the controversy. The parties agree that the rates on the shipments in issue were not affected by either Item 180 or Item 275. The question is whether the minimum scale of class rates shown in Item 235 was nevertheless applicable.[2]

Complainant argues that the phrase "...but not less than the minimum scale of Class Rates shown in Item 235" is a qualification to what had been said before in the same sentence; in other words, it is complainant's contention that if and when a rate is subject to Items 180 or 275 then, and only then, is it subject to the minimum scale of class rates shown in Item 235. In support of this contention complainant referred to dictionary definitions of the word "but," and cited court decisions in which the word was considered.

The defendant contends that the phrase "...but not less than the minimum scale of Class Rates shown in Item 235" is not merely a qualification to what has gone before, but is a condition which applies whether or not the rates are subject to Items 180 or 275. It cited authorities giving the word "but" a meaning different from that advocated by complainant, and argued that the tariff interpretation should not be based upon definitions of the word "but" in any event. Rather, defendant asked the Commission "to interpret provisions of a tariff the way they would be understood by an ordinary shipper, to direct consideration to the whole of the tariff under consideration, to give effect to every provision, and not to accept an interpretation that would yield absurd and illogical results."

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2 The rates in question were published in Pacific Freight Tariff Bureau Tariff No. 255-B, C.R.C. No. 60 of J. P. Haynes, Agent. Item 180 applied on interstate traffic only. Item 275 applied only in connection with shipments subject to less-than-carload or any-quantity ratings; the shipments in issue were subject to carload ratings.

It cited examples to show that complainant's interpretation would have the result of nullifying the carload rates set forth in the minimum class scale, and also of establishing higher rates on shipments picked up and delivered by the shipper than on those picked up and delivered by the carrier. For the purpose of showing the framer's intent to make the minimum class scale applicable to all class-rate traffic between the points involved, defendant introduced copies of tariff provisions immediately preceding those in question, and also copy of informal application to and authorization from the Commission to establish the tariff provisions herein considered.

It is unnecessary to discuss in detail the opposing arguments or their supporting authorities. The interpretation contended for by complainant, regardless of any merit it may have if the disputed phrase is isolated and the word "but" given a restricted and strictly technical meaning, is an unnatural construction of the tariff as a whole. If adopted, it would render some provisions of the tariff meaningless and others patently unreasonable. Under generally recognized rules of tariff interpretation the tariff should be given a fair and reasonable construction and not a strained or unnatural one; all of the pertinent provisions of the tariff should be considered together, and if those provisions may be said to express the intention of the framers under a fair and reasonable construction, that intention should be given effect; and constructions which render some provisions of the tariff a nullity, and which produce absurd or unreasonable results, should be avoided. (See Forbes & Sons Piano Co. v. A.G.S.R.R. Co. et al., 101 I.C.C. 77, cited in San Francisco Milling Co. v. Southern Pacific Co., 28 C.R.C. 870; California Milling Corp. v. L.A. & S.L. R. Co., 203 I.C.C. 578; Cudahy Packing Co. v. C.B.& Q.R.R. Co., 147 I.C.C. 441.)

Upon careful consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds as a fact that the charges assessed on complainant's shipments did not exceed those applicable under the tariffs lawfully in effect at the time of movement. The complaint will be dismissed.

The order of submission, pursuant to agreement between the parties, provided for the filing of a brief by complainant, followed by reply briefs by defendants. Complainant has filed an additional "reply brief." It has not been considered by the Commission in arriving at its decision in this matter.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and the Commission being fully advised,

IT IS HEREBY ORDERED that this complaint be and it is hereby dismissed.

Dated at Los Angeles, California, this 30th day of October, 1945.

Harold Anderson
Justus F. Craemer
Franklin Clark
Ira H. Rowell
Commissioners