C.4828-NA

ORIGINAL

Decision No. 39586

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Libby, McNeill & Libby, Complainant, vs. Southern Pacific Company, Defendant.	)	Case No. 4828

Appearances

Wm. M. Larimore, for Complainant.
Chas. W. Burkett, Jr., for Defendant.

OPINION

By complaint filed May 10, 1946, Libby, McNeill & Libby, a corporation, alleges that the charges collected by Southern Pacific Company for transporting 107 carloads of used empty wooden lug boxes from Sunnyvale to various destinations during 1944 and 1945 exceeded the lawful tariff charges in violation of Section 17(a)2 of the Public Utilities Act. An order directing the defendant to make reparation in the sum of $657.68, plus interest, is sought. The defendant in its answer denied the essential allegations of the complaint. A hearing was held before Examiner Bradshaw on August 6, 1946. Briefs have been filed.

Of the shipments covered by the complaint, 49 were destined to Tagus, 47 to Woodland, 6 to Dantoni, 3 to Loomis, and one each to Tracy and Turlock. They ranged in weight from 8,838 to 17,199 pounds, but were tendered as carload shipments. Those destined to Tagus were shipped for a return pay load, while the shipments to the other destinations were not made for that purpose. Charges were collected on the Tagus shipments based upon a published carload rating of "Class E but not to exceed less carload rate." The balance

of the shipments, not having been forwarded for a return pay load, were charged the published Class B rates. In all cases, the charges were based on a carload minimum weight of 20,000 pounds.

The governing tariff[1] contained several class rate scales providing different rates, subject to less-than-carload or any-quantity ratings, dependent on whether shipments were tendered in lots of less than 2,000 pounds or in larger quantities, including lots of 10,000 pounds and less than 20,000 pounds. In addition, class rate scales, subject to carload ratings and various minimum weights, were published on freight in "carloads."

Complainant contends that, instead of observing the carload rates and minimum weight, the correctness of which are not in issue, the charges should have been determined by applying the less-than-carload rates published on "lots of 10,000 pounds and less than 20,000 pounds" to the actual weights of the shipments which weighed 10,000 pounds and over, and to a weight of 10,000 pounds where shipments weighed less than that amount.[2] In doing so, it relies upon the wording of the following provision of the tariff,

---

1 Pacific Freight Tariff Bureau Tariff No. 255-C, Agent J. P. Haynes' C.R.C. No. 95.

2 The rates (in cents per 100 pounds) and the charges collected, contrasted with those complainant regards as lawfully applicable, appear in the following tabulation:

Destination	Rate Charged	Charges Collected	Rates and Resultant Charges Alleged to Have Been Applicable: Rate	Charges
Tagus	15	$1,470.00	17	$1,052.39
Woodland	17½	1,645.00	25½	1,464.08
Dantoni	21	252.00	30	223.16
Loomis	18½	111.00	26½	87.77
Tracy	9	18.00	16	16.42
Turlock	14	28.00	21½	22.50
		$3,524.00		$2,866.32

defining the term "lot", used in connection with the rates subject to less-than-carload or any-quantity ratings:

> "The term 'Lot' means a specified quantity of freight tendered to carrier as a single unit regardless of the classification of the freight tendered."

Complainant directs particular attention to the clause "regardless of the classification of the freight tendered". It urges that the term "lot" embraces all shipments, whether carloads or less-than-carloads, and therefore the application of the rates published on "lots of 10,000 pounds and less than 20,000 pounds" was not contingent upon the shipments being tendered or transported as less-than-carloads. Complainant's contention in this regard is that, in order to restrict the rates to less-than-carload traffic, the definition should have provided that the freight be tendered as less-than-carload shipments, notwithstanding that the rates in question could only be arrived at by using less-than-carload or any-quantity ratings.

Defendant regards other tariff provisions as controlling. Among them appears the following rule, published in Item 885-B of the governing tariff:

> "When charges on a carload shipment based on carload rate and actual or authorized estimated weight, subject to minimum carload weight, exceed the charges that would accrue on the same lot of freight if taken as an LCL shipment computed upon the weight of the shipment but not less than the minimum weight governing the carload rate, the lower of such charges will apply."

A provision in Rule 14 of the Western Classification, to which the tariff was subject, states that the published minimum carload weight is the lowest weight on which the carload rating or rate will apply. The same rule further provides that when freight is loaded in or on a car by the shipper and such car is not fully loaded, but is tendered as a carload shipment and is forwarded

without other freight in it, the shipment will be charged for as a carload. It was also pointed out that defendant's terminal tariff authorizes the application of carload rates to and from industry tracks and private sidings but that the tariffs do not provide for the same application in the case of less-than-carload rates. According to defendant's witness, the interpretation urged by complainant would in many cases remove the application of minimum weight requirements on carload traffic and permit shippers to request carload service for transporting small shipments at charges considerably less than those produced by observing published carload minimum weights.

In addition, defendant refers to the generally accepted principle that, in the absence of specific tariff authority, when shipments are tendered as carloads and receive carload service, carload rates will be applied, citing Pacific Construction Co. v. S.P. Co., 1 C.R.C. 110, Pratt-Low Preserving Co. v. S.P. Co., 24 C.R.C. 438, and a number of decisions of the Interstate Commerce Commission.[3] It asserts that provision is made in Item 885-B of the tariff for the alternation of less-than-carload and carload charges subject to certain limitations, but that the charges resulting therefrom would be greater than those which were collected on complainant's shipments. Defendant finally characterizes complainant's interpretation as one which would produce an illogical result and contends that it therefore should not be accepted as conforming to the requirement that tariffs be given a fair and reasonable, rather than a strained and unnatural, interpretation.

---

[3] Passow & Sons v. Chicago M. & St.P. Ry. Co., 37 I.C.C. 711; Zelnicker Supply Co. v. T. & O.C. Ry. Co., 51 I.C.C. 133; Columbian Iron Works v. Southern Ry. Co., 45 I.C.C. 173; Kinninson Bros. v. C.B. & Q.R. Co., 128 I.C.C. 703; Leach v. Oregon-Wash. R. & N. Co., 151 I.C.C. 513; Atkins & Co. v. Ill. Central R. Co., 152 I.C.C. 599; and Natl. Concrete M.F. Corp. v. Chesapeake & O. Ry. Co., 165 I.C.C. 185.

When all of the pertinent provisions are considered together, as is necessary in proceedings of this nature (Westrope v. Northwestern Pac. R.R. Co., 36 C.R.C. 616, 618), the governing tariff cannot be regarded as ambiguous or uncertain. It is also apparent that whatever doubt may exist concerning the application of the tariff rests, at least in part, upon a misconception of the meaning of the phrase "regardless of the classification of the freight tendered," used in defining the term "lot."

Classification of freight, in carrier rate-making practice, is the grouping of commodities into a limited number of classes, with a view to assigning to the same class all commodities which are entitled, under normal conditions of transportation, to the same, or substantially the same, rate. Barschi & Son v. Baltimore & O.R. Co., 155 I.C.C. 350, 351. Thus, the term "lot," employed in connection with less-than-carload or any-quantity ratings, means a specified quantity of freight tendered as a single unit, regardless of the class or classes at which the commodities may be rated for classification purposes.[4]

No useful purpose would have been served by specifically including in the definition a restriction that shipments be tendered as less-than-carload traffic. The "lot" rates were subject to less-than-carload or any-quantity ratings and did not apply in connection with carload ratings. The tariff contained specific rates on carload shipments. There was also a provision, viz.: Item 885-B, to take care of situations where lower charges than the carload basis resulted from the use of less-than-carload rates. Accord-

---

[4] Several years ago, the Commission prescribed an identical rule to govern the same type of rate structure as is under consideration in this proceeding. The purpose in doing so was "to remove any doubt whether or not a shipment is entitled to lot rates if the articles shipped are of different classes" and to avoid penalizing a shipper "merely because different parts of his shipment fall under different classifications." Decision No. 29592 in Cases No. 4088, Part "M", and 4145, Part "B", March 8, 1937 (not printed).

ing to this item, less-than-carload rates would have applied on carload shipments in instances where lower than carload charges resulted from less-than-carload rates when computed "upon the weight of the shipment but not less than the minimum weight governing the carload rate." Charges so arrived at, as stated by defendant, would have exceeded those collected on complainant's shipments.

Under complainant's interpretation (a) carload service could be used for small shipments without observing published carload minimum weights; (b) the specific provisions of Item 885-B, dealing with the computation of charges in instances where the alternation of less-than-carload and carload charges are permitted, would be nullified; and (c) the rule providing that, when cars are not fully loaded but the freight therein is tendered as a carload shipment and forwarded without other freight in the car, the shipment will be charged for as a carload would be rendered inoperative in many cases. The tariff should not be construed as providing for such results in the absence of clear and unequivocal language to that effect.

Upon consideration of all the facts and circumstances of record in this proceeding, the Commission is of the opinion and finds that the charges collected by defendant for transporting the shipments embraced in the complaint have not been shown to be in excess of the lawful tariff charges or otherwise unlawful. The complaint will be dismissed.

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 the complaint filed in this proceeding be and it is hereby dismissed.

This order will become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 4th day of November, 1946.

Harold P. Huls
Justus F. Craemer
Franck R. Havenner
Ira H. Rowell
R. E. Mittelstaedt
Commissioners