

ORIGINAL

Decision No. 42609

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAFEMAY STORES, et al.,
Complainants,
v.
THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY CO., et al.,
Defendants.

Case No. 4867

BLASE BROS. & CO., et al.,
Complainants,
v.
THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY CO., et al.,
Defendants.

Case No. 4869

Appearances

V. C. Conaway, C. V. Dickinson, F. A.
McDonald and F. W. Turcotte, for
complainants.
J. E. Hennessy and William Meinhold,
for defendants.
J. M. Seuby, Jr. and George T. Hurst,
for The Atchison, Topeka and Santa
Fe Railway Company.

O P I N I O N

These proceedings were heard on a common record before
Examiner Edwin Lake. They will be disposed of by one decision.
Complainants allege that defendants collected transportation
charges at variance with their published and filed tariff rates in
violation of Section 17(a)2 of the Public Utilities Act.

The shipments covered by the complaints consisted of carloads of fresh fruits and vegetables and fresh meats and packing house products moving in refrigeration service under class and commodity rates between various points in California.

The controversy arose over an interpretation of the rules authorizing the use of less than carload rates on carload shipments as provided in Pacific Freight Bureau Tariff No. 255-C, Cal.P.U.C. No. 95 of J. P. Haynes, Agent, and Western Classification No. 71, Cal.P.U.C.-W.C. No. 4 of R. C. Fyfe, Agent.¹

The pertinent portions of the rules in issue are as follows:

Item 835-B
(Tariff No. 255-C)

"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."

Rule 15
(Western Classification No. 71)

"****the charge for a car fully loaded must not exceed the charge for the same lot of freight if taken as a LCL shipment.****"

Shipments transported under class rates were subject to Item 835 series. Other shipments moved under commodity rates. The tariffs in which the commodity rates were published were governed by the provisions of Rule 15.

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Corresponding rules were published in Pacific Freight Tariff Bureau Tariff No. 255-D, Cal.P.U.C. No. 130 of J. P. Haynes, Agent and in Western Classifications Nos. 70, 72 and 73, Cal.P.U.C.-W.C. Nos. 3 and 5 of R. C. Fyfe, Agent and Cal.P.U.C.-W.C. No. 6 of Geo. H. Dumas, Agent, respectively. These publications, together with those mentioned above, were in effect at different times during the period within which the shipments involved in these proceedings were transported.

Complainants contend and defendants deny that the provisions of the quoted rules authorize the application of the less than carload rates when the charges resulting therefrom produce a lower charge than that accruing under the carload rate plus the charge for refrigeration service. Illustrative of these positions is the following:

A carload shipment of cantaloupes weighing 24,336 pounds moved from Salida to Oakland via Southern Pacific. Standard refrigeration service was ordered and furnished. The rate assessed was a carload rate of 12 cents per 100 pounds. It produced a charge of \$29.20. Under the provisions of Agent J. J. Quinn's Perishable Protective Tariff No. 13, Cal.P.U.C. No. 14, a charge of \$45.00² was also assessed for refrigeration service. The total charge amounted to \$74.20. Complainants contend for a charge of \$40.15³ based on the less than carload rate of 16½ cents per 100 pounds without refrigeration charges.

Complainants assert that the words "carload rate" as used in Item 885 series and the expression "charge for a car fully loaded" as set forth in Rule 15 embrace all charges assessed against the shipment, including the charges for refrigeration. Defendants on the other hand contend that the quoted expressions refer exclusively to the transportation line-haul rates and that the alternative provisions of the rules in question apply only when the line-haul carload charges, exclusive of charges for refrigeration services, are greater than those resulting under the less than carload rates.

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Corresponding charges were published in Perishable Protective Tariffs Nos. 12 and 14, Cal.P.U.C. Nos. 13 and 16, of J. J. Quinn, Agent.

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The perishable protective tariff authorized free refrigeration service on less than carload shipments.

Defendants accordingly maintain that they have correctly applied the tariffs in assessing charges on the shipments here involved. They further contend that by interpreting the expressions "carload rate" and "charge for a car fully loaded" to include charges for protective service complainants are reading into those terms a meaning which they do not contain.

In considering the position of complainants relative to the rules in issue we are confronted with the well-established principle that tariffs should be given a fair and reasonable construction as opposed to a strained and unnatural interpretation. The words "carload rate," as they are employed in the expression, "based on carload rate and actual or authorized estimated weight, subject to minimum carload weight" cannot be reasonably construed as embracing any and all charges whatsoever incurred in the course of transportation. The rule in Item 885 series is one of many published in the tariff for use in connection with the class and commodity rates therein contained. In the absence of reference to Item 885 series in other tariffs, the provisions of that item can have no application to the rates or charges published in such other tariffs. In this connection it is observed that Agent Quinn's Tariff No. 13, Cal.P.U.C. No. 14, which contains the carload refrigeration charges assessed on the shipments involved, does not indicate that it is governed by the rules carried in Tariff No. 255-C; consequently the charges published in the Quinn tariff

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Also involved is the question of the significance to be given the "Note" and exception thereto in Item 885 series of Tariff No. 255-C. This note provides that in connection with certain lines the less than carload rate will be assessed on actual or authorized estimated weight when car is loaded to full visible capacity. The exception reads: "Does not apply in connection with shipments moving under provisions of Rule 630, Perishable Protective Tariff No. 13, I.C.C. No. 22, C.R.C. No. 14 of J. J. Quinn, Agent."

cannot properly be considered as being subject to the provisions of Item 885 series.

Similar circumstances prevail with respect to those shipments as to which complainants seek to invoke Rule 15 of the Western Classification. Agent Quinn's tariff fails to disclose that it is governed by the rules contained in the Western Classification.

Upon careful consideration of all the facts and circumstances of record we find:

1. That the applicability of the charges based upon carload or less than carload rates under the provisions of Item No. 885 series of Tariff No. 255-C, and Rule 15 of Western Classification No. 71 is determined prior to employing the provisions of J. J. Quinn's Tariff No. 13.

2. That for the shipments in issue here the carload rates produce lower charges than those resulting from the less than carload rates.

3. That complainants have not shown that the charges assessed were in violation of Section 17(a)2 of the Public Utilities Act.

The complaints will be dismissed.

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 the Commission being fully advised,

IT IS HEREBY ORDERED that the above-entitled complaints be and they are hereby dismissed.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 15th day of March, 1949.

R. J. Anderson
Justice F. Cravner
James H. Lawrence
Harold P. Huls

Commissioners