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ORIGINAL

Decision No. 42389

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sunshine Biscuits, Inc. (Formerly Loose-Wiles Biscuit Co.) Complainant,	)	
vs.	)	Case No. 4959
The Atchison, Topeka and Santa Fe Railway Co., The Western Pacific Railroad Company, Southern Pacific Company, Defendants.	)	

O P I N I O N

Complainant alleges that defendants assessed and collected rates and charges for the transportation of 220 shipments of bakery goods from Oakland to San Diego during the period from July 6, 1945, to August 4, 1948, which were and are in excess of their published and filed tariffs in violation of Section 17(a)2; unjust and unreasonable in violation of Section 13; and in violation of the aggregate of intermediates provisions of Section 24; of the Public Utilities Act.[1] Reparation and reduced rates for the future are sought.

The matter has been submitted upon written statements of fact and argument. Defendants deny the essential allegations of the complainant.

The shipments in question consisted of bakery goods transported from complainant's baking plant in Oakland to its distributing plant in San Diego. The individual shipments weighed 20,000 pounds

[1] On a number of the shipments involved in the alleged violations of Sections 13, 17(a)2 and 24 of the Public Utilities Act, the complaint is barred by Section 71(b) of that Act.

or more and were forwarded from time to time in accordance with the requirements of the San Diego plant. They were loaded by the consignor into rail cars placed on the industry track serving the Oakland plant. Each shipment was tendered on a single bill of lading covering the through movement and was designated therein as "1 carload." Before departure of the various cars from Oakland, however, the consignee requested delivery of the shipments to its plant in San Diego which is not served by an industry track. The railroad agent at Oakland billed the cars accordingly and the delivery was accomplished through the motor vehicle pickup and delivery service regularly maintained in San Diego by the delivering carrier.

The governing tariffs contained several scales of class rates applicable for the transportation of freight in various quantities ranging from less than 2,000 pounds to 20,000 pounds or more on the basis of less-than-carload or any quantity class ratings.[2] In addition, class rates subject to carload ratings and minimum weights were provided for the transportation of carload freight. The rates named in the tariffs were subject to further provisions that pickup or delivery service would be accorded only on shipments on which charges were assessed on the basis of less-than-carload or any-quantity ratings.[3] For the transportation here involved,

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[2] Pacific Freight Tariff Bureau Tariff No. 255-C, C.R.C. No. 95, was in effect from September 15, 1942, to March 20, 1946, when it was canceled and superseded by Pacific Freight Tariff Bureau Tariff No. 255-D, C.R.C. No. 130. The latter tariff is still in effect at the present time.

[3] Provision was also made in the tariffs for according pickup or delivery service when charges were assessed under certain less-than-carload commodity rates. Such rates, however, are not here involved.

defendants assessed a through rate of 54½ cents applicable on quantities of 20,000 pounds or more.[4] This rate was based upon a less-than-carload rating of fourth class.[5]

Complainant contends that a combination rate of 49 cents, minimum weight 20,000 pounds, was applicable under defendants' tariffs instead of the 54½-cent rate assessed. The combination rate is comprised of a carload rate of 31½ cents, minimum weight 20,000 pounds, applicable from Oakland to Fullerton, and a rate of 17½ cents for quantities of 20,000 pounds or more based upon a fourth class less-than-carload rating, applicable from Fullerton to San Diego.[6] The latter rate included delivery to points within defined territory in San Diego. Complainant relies upon provisions set forth in Item No. 510 of the governing tariffs, supra, authorizing alternative application of rates as follows:

COMBINATION RATES WITHIN CALIFORNIA

(Applies on intrastate traffic within California only, and must not be used to make rates on interstate traffic.)

Whenever a class rate and a commodity rate are named between specific 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 make a lower through rate.

It is argued by complainant that these provisions fail to specify the kinds of class or commodity rates that may be used in constructing the authorized combination rates, and that in the

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[4] Throughout this opinion, rates are stated in cents per 100 pounds and do not include authorized general increases shown in Tariffs of Increased Rates and Charges Nos. X-148, X-162 and X-166 on file with the Commission.

[5] Under Item No. 230 of the tariffs in question, bakery goods were subject to a fourth class less-than-carload rating when shipped in quantities of 20,000 pounds or more, and to a fifth class rating, minimum weight 30,000 pounds, for carload shipments.

[6] The 31½-cent carload rate was named in Pacific Freight Tariff Bureau Tariff No. 300, C.R.C. 102, and the 17½-cent rate was named in Pacific Freight Tariff Bureau Tariff No. 255-C, C.R.C. No. 95, effective September 15, 1942, and Pacific Freight Tariff Bureau Tariff No. 255-D, C.R.C. No. 130, effective March 20, 1946.

absence of any restrictions the combination rates may consist of "carload rates or less-than-carload rates or a combination of either or both and they may be either class or commodity rates." Complainant contends that the lower combination rate above indicated was therefore applicable under defendants' tariffs to the shipments in question. Complainant further contends that the tariff requirements surrounding the separate factors comprising the sought combination rate were fully complied with by reason of the loading of the shipments by the consignor into the rail cars at point of origin and of the request for delivery service at the point of destination which was filed by the consignee before the shipments left the point of origin.

Defendants deny that the sought combination rate consisting of carload and less-than-carload factors was applicable to the shipments in question. They point out that Rule 14 of the Western Classification, to which the tariffs were subject, provided that carload ratings or rates applied only when the freight was loaded by the consignor and unloaded by the consignee. Defendants contend that since the shipments were unloaded by them the movements failed to meet the requirements of Rule 14 and therefore could not be considered as carloads under any circumstances.

It is urged by defendants that the shipments were subject to charges computed under less-than-carload rates. They maintain that tender of the shipments as carloads was not controlling in the application of rates in view of the subsequent request for delivery service at the point of destination. It is pointed out that no provision was made in the tariffs for rendering delivery on shipments moving under carload rates. On the other hand, it is asserted, the tariffs specifically provided that such service was

available only when charges were computed on a less-than-carload basis. Defendants maintain that, in view of the request for delivery at point of destination, the service specified in the tariffs for less-than-carload shipments was rendered. Defendants further maintain that the movement from the industry track at point of origin was covered by tariff provisions authorizing the placing of rail cars on private tracks for loading by shippers with less-than-carload freight moved under less-than-carload rates.

In effect, complainant contends that under defendants' tariffs a shipment tendered on a single bill of lading may be considered as a carload movement for part of the through transportation and as a less-than-carload shipment for the remainder of the movement. In considering this matter, 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 tariff rules authorizing alternative application of combination rates do not specifically deal with combining less-than-carload and carload rates. Tariffs must be read in their entirety and their plain intent cannot be destroyed by the use of only detached parts thereof. Golden Gate Brick Co. vs. Western Pacific R.R. Co. (2 C.R.C. 607), and California Packing Corporation vs. Western Pacific R.R. Co. (Decision No. 27527 in Case No. 3161.)

There were no carload rates in force from the point of origin to the point of destination which included delivery service. Tariffs Nos. 255-C and 255-D, supra, which named the through less-than-carload rates assessed by defendants and the less-than-carload

factor of the combination rate sought by complainant were subject to Rule 14 of the Western Classification. So was Tariff No. 300, supra, which named the carload factor of the sought combination rate. Rule 14 provided, among other things, that carload ratings or rates applied only when a carload of freight was loaded by the shipper and was unloaded by the consignee. Since defendants unloaded the shipments, the movements failed to meet the standards set up by Rule 14 for carload shipments and may not be so considered.

The aforesaid Tariffs Nos. 255-C and 255-D named less-than-carload rates applicable for weights ranging from less than 4,000 pounds to more than 20,000 pounds. Items Nos. 830 series of the tariffs provided that pickup or delivery service would be accorded only in connection with shipments upon which charges were assessed on the basis of less-than-carload or any quantity ratings, or on the basis of less-than-carload commodity rates named in the tariffs in question. This is a clear statement of the circumstances and conditions under which shippers could obtain pickup or delivery service. The tariffs designated the "shipment" as the unit for assessing the less-than-carload and carload rates named therein. There was nothing in the definition of the term "shipment" shown in Items Nos. 780 series of the tariffs indicating that the character of a shipment tendered on a single shipping document could be a combination of less-than-carload and carload. On the contrary, the language employed in the definition contemplated the shipment as a single unit from point of origin to point of destination.

Consideration of all of the pertinent provisions of the tariffs in question leads to the conclusion that the combination rate sought by complainant was not applicable under defendants' tariffs to the shipments here involved, and that defendants correctly assessed their tariff rates.

We turn now to complainant's allegations that the rate assessed was in violation of the aggregate of intermediates provisions of Section 24, and was unjust and unreasonable in violation of Section 13, of the Public Utilities Act.

The alleged violation of Section 24 was based upon the fact that the through rate assessed was in excess of the sought combination rate hereinabove discussed. In view of the conclusion that the combination rate was not applicable on the shipments here involved, it follows that the through rate assessed was not in violation of Section 24 as alleged by complainant. Moreover, the showing made involved a comparison of a through less-than-carload rate with the sum of intermediate rates consisting of carload and less-than-carload rates. In determining whether a violation of the aggregate of intermediates provisions exists, rates of the same kind must be compared with one another. Carnation Company vs. Southern Pacific Company, et al., (269 I.C.C. 470).

With respect to the allegation of unreasonableness, complainant contends that the 54½-cent rate assessed by defendants was unjust and unreasonable to the extent that it exceeded the 49-cent combination rate previously discussed. It is asserted that charges no greater than those accruing under the combination rate could have been obtained on the shipments here involved by forwarding them from Oakland to Fullerton under individual bills of lading providing for carload service, and by reshipment from

Fullerton to San Diego under new bills of lading specifying less-than-carload service including delivery in San Diego. As an alternative, complainant urges that the carload rate of 46½ cents, minimum weight 30,000 pounds, maintained by defendants between Oakland and San Diego, plus a charge at the rate of not more than 5 cents for the unloading and delivery, is a reasonable rate for the service provided on the shipments. The sought 5-cent charge was said to be identical with that provided in defendants' tariffs as a deduction from pickup and delivery rates when consignees accept less-than-carload shipments at defendants' depots in lieu of availing themselves of the delivery service included in such rates. Complainant contends that under the circumstances surrounding the 5-cent deduction a like charge for unloading and delivery of the shipments here involved is reasonable.

Defendants assert that the 5-cent unloading and delivery charge sought by complainant was lower than the actual cost of delivery exclusive of the unloading. The record shows that the delivering line's contract drayman in San Diego was compensated for performing delivery service at rates ranging from 10 cents in 1945 to 14-3/4 cents in 1947 and thereafter. Defendants maintain that a charge of at least 3 cents per 100 pounds provided in the Western Classification for unloading should also be given effect. It is pointed out that upon giving effect to these charges in connection with the 46½-cent carload rate, the lowest resulting rate for carload service including unloading and delivery by defendants would amount to 59½ cents, or 5 cents greater than the rate assessed on complainant's shipments.

Complainant's showing respecting the alleged unreasonableness of the rates assessed by defendants rests primarily upon the fact that it could have obtained a rate equal to the 49-cent combination rate by forwarding the shipments from Oakland to Fullerton under bills of lading specifying carload service and by reforwarding from Fullerton under new bills of lading providing for less-than-carload service including delivery. The services that would thus be accorded on the basis of separate shipments substantially differ from those available under the assailed rate. Rate comparisons are of little probative value unless it be shown that the factors influencing the volume of the compared rates are similar, and the party offering such comparisons must show that they are a fair measure of the reasonableness of the rates in issue. Krieger Oil Co. vs. Southern Pacific Company (41 C.R.C. 521) and Pillsbury Mills, Inc. vs. Southern Pacific Company (41 C.R.C. 564). Nothing in this record suggests that the failure to forward the shipments as indicated was attributable to any action taken by defendants. With respect to complainants' alternate allegation that the published carload rate of 46½ cents plus a charge of 5 cents for unloading and delivery would result in a reasonable rate for the service performed, defendants have shown that the 5-cent charge was substantially below the cost of performing the services in question. It may not be used as the measure of maximum reasonableness.

Upon careful consideration of all of the facts and circumstances of record in this proceeding, the Commission is of the opinion and finds that complainant has not shown the assailed rates and charges to be in excess of defendants' published and filed tariffs in violation of Section 17(a)2, or unjust and unreasonable in violation of Section 13, or in violation of the aggregate of intermediates

provisions of Section 24, of the Public Utilities Act. The burden of proof is upon the complainant, and in the absence of affirmative proof the complaint must 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 above-entitled complaint, as amended, be and it is hereby dismissed.

Dated at Los Angeles, California, this 11th day of October, 1949.

R. J. Prudham

James F. Carman

Harold P. Hals

Kenneth Potter

Commissioners