

Decision No. 51641

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

American Can Company, a corporation,)
Complainant,)
vs.)
Southern Pacific Company)
Western Pacific Railroad Company,)
Defendants.)

Case No. 5564

OPINION AND ORDER

By this complaint, filed August 4, 1954, American Can Company alleges that certain demurrage charges assessed by defendant railroads are unjust and unreasonable in violation of Section 451 of the Public Utilities Code. It seeks an order of the Commission authorizing defendants to waive collection of the charges amounting to \$1,050.60.

By agreement of the parties, the matter was submitted upon complainant's written memorandum of facts and argument and upon defendants' answer thereto.

There is no dispute as to the facts. Complainant leased 18 refrigerator cars, unfit for regular perishable movements, from Southern Pacific Company in 1953. The cars were used for the purpose of storing tin cans at complainant's Sacramento plant on its own tracks and on tracks leased from The Western Pacific Railroad Company. Assertedly complainant contemplated that the loaded cars would be later switched to the plant of California Packing Corporation at Sacramento, where the cans would be used for the canning of peaches. Due to an unforeseen strike of the employees of the California Packing Corporation and later of employees of the Sacramento Northern Railway, the cars could not be moved until after the close of the peach canning season. Since there was then no longer a market for the cans at Sacramento, it was necessary for complainant to ship them to other points.

The car demurrage rules and charges are set forth in Association of American Railroads Tariff Bureau Freight Tariff No. 4-A, Cal. P.U.C. No. 65 of L. C. Schuldt, Agent. That tariff makes subject to demurrage, with certain exceptions, "cars of either railroad or private ownership held for or by consignors or consignees for loading, unloading, forwarding directions or for any other purpose." One of the exceptions specifies that the demurrage rules and charges are not applicable to "cars leased *** for the storage of commodities, while held on tracks owned or leased by the lessee of the car, provided the use thereof is in no way connected with any transportation service for which a tariff charge is assessed, except switching charges." This exception would have exempted from demurrage the cars involved herein if the cars had been switched from complainant's tracks to those of the California Packing Corporation, but became inapplicable because of the subsequent line-haul movement.

The parties agree that the assessed demurrage charges were properly applied under the tariff. However, complainant alleges and the defendants admit that under the special and unusual circumstances herein developed the application of the demurrage charges is unjust and unreasonable.

Upon consideration of all of the evidence of record, the Commission is of the opinion and finds that the assessed demurrage charges were unjust and unreasonable under the particular circumstances herein involved.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that defendants, Southern Pacific Company and The Western Pacific Railroad Company, be and they are

hereby authorized to waive the collection from complainant, American
Can Company, of demurrage charges on the cars herein involved in
the amount of \$1,050.60.

This order shall become effective twenty days after the
date hereof.

Dated at San Francisco, California, this 5th day of
July, 1955.

Justus J. Calmes
President
Barth. F. Harrison
Wm. H. Hale
H. H. (Hart) Go.
Commissioners