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ORIGINAL

Decision No. 57327

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUNNY SALLY, INC., a corporation, Complainant, vs. LOM THOMPSON, an individual, doing business as Thompson Truck Lines, Defendant.	Case No. 5864

Joseph C. Gill, for Sunny Sally, Inc., complainant.

George R. Kirk and Jack O. Goldsmith, for Lom Thompson, defendant.

O P I N I O N

Complainant seeks an order authorizing and directing defendant, a highway common carrier, to cancel bills covering alleged undercharges in the amount of $3,825.81 in connection with shipments of carrots which defendant transported for complainant from the Imperial Valley to Los Angeles during the months of April, May and June, 1955.

Defendant originally assessed and collected charges for the transportation on the basis of a rate of 25 cents per 100 pounds. It subsequently rendered the bills involved herein to increase its charges to a basis of 39 or 40 cents per 100 pounds. The latter rates were defendant's published tariff rates for the transportation at the time the service was performed. Assertedly, the 25-cent rate was assessed in the first instance in the belief that defendant's tariff did not apply to the transportation involved. Complainant seeks to be relieved of the additional charges on the ground that the rates of 39 and 40 cents per 100 pounds for the transportation that was performed is unjust and unreasonable, in violation of

Sections 451 and 726 of the Public Utilities Code.[1/]

A public hearing on the complaint was held before Examiner C. S. Abernathy at Los Angeles on July 22, 1957. The matter was continued to a date to be set pending study of certain questions whether an order such as complainant seeks may be issued under the applicable constitutional and statutory provisions.[2/] An adjourned hearing was then held before Examiner William E. Turpen at Los Angeles on June 23, 1958. The matter was submitted on this latter date.

With certain exceptions the transportation of fresh produce within California is governed by minimum rates which have been established by order of the Commission. During the period that the transportation which is involved herein was being performed, the truckload rate which applied as the minimum rate for the transportation of carrots from the Imperial Valley to Los Angeles was 42 cents per 100 pounds, minimum weight 24,000 pounds. However, this minimum rate did not apply when the transportation was to a cannery, packing plant, packing shed, precooling plant, winery or processing plant. Complainant is a processor; hence the minimum rates are not applicable.

1/ In addition to its request for relief from the additional charges complainant also requested that just and reasonable rates for the transportation for the future be established. This request was withdrawn, however, for the reason that on June 20, 1957, defendant established a rate of 25 cents per 100 pounds, minimum weight 36,000 pounds for the transportation of fresh fruits and vegetables from the Imperial Valley to canneries, packing plants, precooling plants or processing plants located in the Los Angeles area.

The same charges which are in issue in this matter are the subject of an action against Sunny Sally, Inc., in the Superior Court in and for the County of Imperial. In said action Lom Thompson seeks a judgment against Sunny Sally, Inc., in the amount of $3,825.81, the sum of the asserted undercharges.

2/ Complainant and defendant both were afforded opportunity to submit memoranda on the questions involved. In response thereto a memorandum-brief was filed by complainant on October 9, 1957.

Clearly, the shipments here involved could only have moved under defendant's tariff rates. Defendant had no 25-cent tariff rate; so the original charge was unlawful and rendition of the undercharge bills by defendant was proper. It has been well established that a misquotation or misunderstanding of a rate does not relieve the parties from assessing and paying the proper tariff rate, as the law charges all parties with a knowledge of the proper rates from which neither the shipper nor the carrier can deviate.

The sole issue here involved, then, is whether the 39-and-40 cent rates set forth in defendant's tariff were unjust and unreasonable or not; and if so, what rate was reasonable. The Commission has found that for movements of carrots between the points involved, when not destined to a processing plant, a rate of 42 cents was reasonable. Failure to find this same rate reasonable to shipments destined to processing plants implies that there may be a difference in transportation characteristics and that some other rate may be reasonable.

The evidence of record does show that there are some differences in cost, both higher and lower, in the handling of shipments to a processing plant as compared to shipments to market. However, the evidence does not enable us to measure this difference nor even to determine if the total of the differences in cost is higher or lower.

Complainant introduced evidence to show that permitted carriers generally observed the 25-cent rate on the same transportation, not only from Imperial Valley points but from other points as well. However, no evidence was introduced to prove the reasonableness of that rate nor that defendant's operations and costs are identical with the other carriers. Complainant also compared the 25-cent rate with similar rates on other commodities, such as cotton seed, fertilizer, sugar, steel, plaster, citrus fruit, canned juices,

and paint, moving between the same points or for comparable distances. Here, also, the evidence does not show any similarity between the transportation of those commodities and carrots.

Complainant has failed to show that defendant's published tariff rates were unjust or unreasonable. In view of the 42-cent minimum rate applicable to shipments of carrots to other than a cannery, packing plant, packing shed, precooling plant, winery or processing plant, we find and conclude that defendant's tariff rates of 39 and 40 cents are within the zone of reasonableness and the sought reparation should be denied. Accordingly, the complaint will be dismissed.

There remain for disposition, two matters. At the original hearing the question was raised as to whether or not discrimination would result from the granting of reparation in the circumstances involved herein. In view of the conclusions reached hereinabove, discussion of this question is not necessary. At the adjourned hearing, complainant stated that a typographical error had been made in the complaint and that it should have referred to 71 truckloads instead of 59. This resulted from an error in counting and the exhibit listing the shipments shows 71 truckloads and the total amount sought, $3,825.81, includes all 71 shipments. Complainant asked that the complaint be amended accordingly. Defendant objected on the ground that Section 737 of the Public Utilities Code requires that the complaint be filed within 90 days after commencement of court action. As the amendment of the complaint is but a correction and does not change the amount of reparation sought, it will be allowed.

O R D E R

Based on the evidence of record and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that the above-entitled complaint be, and it hereby is, dismissed.

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

Dated at San Francisco, California, this 10th day of September, 1958.

President

Commissioners