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ORIGINAL

Decision No. 57799

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CHROMCRAFT CORPORATION, Complainant, vs. DAVIES WAREHOUSE COMPANY, a corporation, Defendant.	)	Case No. 6101

Gordon, Knapp, Gill & Hibbert, by H. C. Alphson. for complainant.
Ivan McWhinney and J. R. Thomas, for defendant.

O P I N I O N

Complainant is a corporation engaged in the distribution and sale of chrome furniture, with headquarters in St. Louis, Missouri. Defendant, a corporation, operates as a public utility warehouseman in Los Angeles. By this complaint, as amended, complainant alleges that the storage, handling and other accessorial charges assessed by defendant in connection with numerous lots of chrome furniture which were stored in defendants warehouse for account of complainant during 1955, 1956 and 1957 were unjust, unreasonable, preferential, discriminatory, and inapplicable, in violation of Sections 451, 453 and 532 of the Public Utilities Code.[1/] Reparation and rates for the future are sought.

1/ The original complaint, filed on May 29, 1958, alleged only that the charges assessed were inapplicable, in violation of defendant's published and filed tariffs, and, therefore, in violation of Section 532 of the Code. By amendment, filed September 17, 1958, the additional allegations involving Sections 451 and 453 were made.

Defendant denies all the material allegations of the amended complaint.

Public hearing of the matter was held before Examiner Carter R. Bishop in Los Angeles on September 22, 1958.

Disposition will first be made of the allegation that defendant assessed charges on the property in question in violation of its published and filed tariff. The record shows the following facts:

Complainant has been storing its furniture with defendant continuously since 1949. The facilities and services of defendant have been utilized in connection with the distribution of complainant's products in the Los Angeles area. Prior to February 1, 1954, defendant assessed storage and handling charges on the so-called "package" basis. Under this arrangement the tariffs in which defendant's rates were published[2/] named rates in cents per package separately for storage and for handling. The volume of the rates varied, depending upon the size or weight, or both, of the package. The rate for handling covered (1) the ordinary labor and duties incidental to receiving the merchandise at warehouse platform for storage and (2) delivery, after storage, to warehouse door. Additional charges, in accordance with other provisions of the tariff, were assessed for accessorial services not included in the foregoing.

By a letter dated December 14, 1953, defendant advised complainant's predecessor company[3/] that the costs to defendant of

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2/ Prior to August 1, 1957, defendant's rates and charges were set forth in California Warehouse Tariff Bureau Tariff No. 7-C, issued by Jack L. Dawson, Agent. Effective on the above date, Tariff No. 7-C was superseded by California Warehouse Tariff Bureau Tariff No. 28, also issued by Agent Dawson.

3/ According to the record, Chromcraft's predecessor was American Fixture & Furniture Company.

warehousing the storer's products were greater than the revenue derived therefrom. This, it appeared, was due to the great amount of sorting, breaking of lots, and handling involved. This circumstance in turn, assertedly, necessitated the use of an unusually large amount of warehouse floor space for sorting and storing of American's merchandise.

Defendant further advised American that if defendant was to continue the warehousing of American's account, it would be necessary to abandon the "package" basis of rates and to assess charges against said account on the so-called "space and labor basis" as set forth in Rule 28 of the aforesaid Tariff 7-C. In its letter of January 8, 1954, Chromcraft Division of American Fixture and Manufacturing Company consented to the proposed change-over to the space and labor basis, which was placed in effect as of February 1, 1954.

In correspondence with defendant, beginning in the latter part of 1957, complainant alleged that it was being greatly overcharged by application of the space and labor basis and that the applicable charges were those which would result under the package basis of rates. Complainant further alleged that as a result of said erroneous application of the tariff it had been overcharged during 1957 in the amount of $1,334.99. Immediate refund was requested.

In its reply, defendant agreed to return to the use of the package basis of charges, at the same time defending its position that, in applying the space and labor rates, it had not

violated any provisions of the applicable tariff. Defendant, therefore, declined the refund claim. The filing of the complaint herein followed.

Rule 28 of Tariff No. 7-C reads as follows[4]:

> "When commodities are stored in excessive assortment or storer demands limited pile height resulting in use of excessive floor space the space rental specified in Rule No. 27 series will be applied as a minimum basis to calculate the storage charges."

The terms "excessive assortment" and "excessive floor space" are not defined in the tariff.

Rule No. 27 series reads, in part, as follows:

> "Where specific reference is made in this Rule the rates for rental of warehouse space in Domestic warehouses, without labor or other services, will be as follows:
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> (There follows a table of rates per square foot per month ranging from 15 cents for space not exceeding 250 square feet down to 7½ cents for space exceeding 2,000 square feet. Minimum charges per month range from $5.00 to $170.00)[5]
>
> "The charge for labor of handling merchandise stored under above rates will be on the basis of Rule No. 25 series. These rates include the use of spur tracks, elevators, warehouse hand trucks and tools, light and water."

Rule No. 25 names certain rates per man per hour for labor furnished by the warehouseman "for special services of any description for which provision is not made elsewhere in the tariff."

4/ A rule to the same effect (substituting reference to Rule No. 57 series for that to Rule 27 series) is provided in Rule No. 59 of Tariff No. 28, supra, which superseded Tariff No. 7-C, effective August 1, 1957.

5/ These rates and charges were carried forward unchanged into Rule No. 57 of Tariff No. 28. The test of that rule reads the same as the above-quoted Rule 27.

Section B of Tariff 7-C provided bases for package rates for storage and handling under various commodity descriptions. A witness for complainant expressed the view that the rates for the kinds of chrome furniture here in issue[6/] were set forth in Item No. 946. The commodity description in that item read as follows:

> "Furniture, New, viz. Office and Professional: Glass or Part Glass .....
> Wood or Steel, with Glass."

Different bases of storage charges are set forth in this item as between glass furniture and wood or steel furniture.

Item No. 948 of Tariff No. 7-C contained the following description:

> "Furniture, New, N. O. S., not including Pianos, Radios or Talking Machines."

In lieu of providing a scale of storage rates in cents per package, this item referred to Rule 27, supra, for the charges for that service and stated a flat rate of 28 cents per 100 pounds for handling.

We are of the opinion and hereby find that the chrome furniture here in issue is embraced by the commodity description set forth in Item No. 948 of Tariff No. 7-C and that said furniture is not covered by the description in Item No. 946 of that tariff.

6/ According to the record complainant distributes chrome dinette furniture, consisting of kitchen sets, tables and chairs; some chrome lounges are also stored.

Section A of Tariff No. 28 provides bases for package rates for storage and handling in connection with various commodity descriptions. The only item therein relating specifically to furniture is Item No. 875, which contains the following description:

"Furniture, New."

This item provides flat rates per cubic foot of 2 cents per month for storage and 3 cents for handling in and out, regardless of the size or weight of individual packages.

According to the record, complainant at no time has demanded "limited pile height," as that term is used in Rule No. 28 of Tariff No. 7-C and the corresponding item of Tariff No. 28. It further appears that the rules in question were invoked (during the years 1954 to 1957, inclusive) under the "goods in excessive assortment" provisions thereof. In the absence of a published definition of that expression, it is defendant's position that it is within the province of defendant's judgment as to whether or not property stored with it is in "excessive assortment" and, therefore, subject to the provisions of Rule No. 28. According to the testimony of defendant's secretary-treasurer, goods are considered to be in excessive assortment when the storage revenue at "package" rates is not sufficient to yield the space rate revenue set forth in Rule No. 27 series, supra.

It is a long-established principle that warehouse tariffs, as well as those of other public utilities, shall set forth the applicable rates, charges, and rules in clear, precise, unambiguous and unequivocal terms.[7/] This principle, moreover, is embodied in

7/ For example, see Decision No. 6209, dated March 22, 1919, in Application No. 4331 (American Warehouse, et al.), (16 CRC 577.)

Rule 2(e) of the Commission's General Order No. 61, governing the construction and filing of warehouse tariffs. Since the tariffs here in issue do not contain a definition of the term "in excessive assortment," leaving it to the discretion of the warehouseman to decide whether or not a particular lot of property in storage is in "excessive assortment," it follows that Rules Nos. 28 and 59 of Tariffs Nos. 7-C and 28, respectively, fail to conform to the above-mentioned requirement of clarity and definiteness.

It is also well established that ambiguous tariff provisions are to be construed against the utility and in favor of the customer. Accordingly, we further find and conclude that, with reference to the services involved herein, rendered by defendant prior to August 1, 1957, the applicable rates and charges were those designated by Item No. 948 of Tariff No. 7-C, viz.: the space rental rates named in Item No. 27-F for storage and a flat rate of 28 cents per 100 pounds for handling in and out. Accessorial services not included in said storage and handling rates were subject to the accessorial charges provided for said services in other items of Tariff No. 7-C.

We further find and conclude that, with reference to the services involved herein, rendered by defendant on or after August 1, 1957, the applicable rates and charges were, and are, those designated by Item No. 875 of Tariff No. 28, viz.: 2 cents per cubic foot per month for storage, and 3 cents per cubic foot for handling in and out. Accessorial services not included in said storage and handling rates were subject to the accessorial charges provided for said services in other items of Tariff No. 28.

Allegations of Unreasonableness, Discrimination and Preference

Complainant alleges that if the Commission should find that the rates and charges assessed by defendant for the storage, handling and other services involved in this proceeding were those legally applicable, said rates and charges were unjust, unreasonable, discriminatory against complainant and preferential of other storers of property in defendant's warehouse facilities, to the extent that said rates and charges exceed those alleged in the complaint herein to be legally applicable.

The evidence adduced by complainant fails to establish that rates and charges higher than those accruing under the so-called package basis of rates exceed maximum reasonable rates and charges. On the contrary, evidence introduced by defendant tends to controvert this allegation. For example, it was shown that a great deal of labor and space are required in the handling of complainant's account. When carloads of furniture from complainant's plant are unloaded by defendant at its warehouse it is found that the merchandise must be extensively sorted before it can be placed in storage. This is because of the wide variety of packages and the many kinds and styles of chrome furniture involved. Also because of the many different sizes and shapes of cartons it is necessary to obtain the cubical measurement and weight of every item carried in complainant's stock. The record discloses other factors which enhance the cost to defendant of handling and storing complainant's merchandise. We find that the allegation as to unjust and unreasonable rates and charges has not been proven.

In support of its allegations of preference and discrimination complainant asserts that other storage accounts in defendant's warehouse under the same or similar circumstances as those pertaining

to complainant were not charged on a space and labor basis, and that by reason of such discriminatory tariff application complainant has been damaged. Probative evidence, however, was not adduced to establish these contentions.

Upon careful consideration of all the evidence of record we find that charges collected by defendant from complainant for the services here in issue rendered during the statutory period should be adjusted to the bases hereinbefore found applicable during the periods (1) before August 1, 1957 and (2) on and after that date, respectively, making such refunds with interest at four percent to, and making such additional collections from, complainant as may be necessary to this end.

We further find that defendant should be required to make such revision in the language employed in Rule No. 59 of the aforementioned Tariff No. 28, as may be necessary to eliminate the existing ambiguities and indefiniteness of the rule. If the proposed revised wording would result in increased charges authority therefor should be sought by the filing with this Commission of an application under Section 454 of the Public Utilities Code.

The infirmities herein found to exist in the aforesaid Rule No. 59 as it relates to defendant's operations also obviously obtain with respect to its application by all other public utility warehousemen for whose account it is published in Tariff No. 28. The Secretary of the Commission will be directed to serve a copy of this decision on the publishing agent of said Tariff No. 28, for such action as he deems proper in the premises.

The exact amounts of reparation due to, and of undercharges to be collected from, complainant are not of record. Defendant should submit to complainant for verification an itemized statement of the warehouse services rendered, the charges as collected, the charges as

revised, and the amount, in each instance, of overcharge or undercharge. Upon the refund of overcharges, as reparation, and the collection of undercharges, defendant shall notify the Commission of the amount thereof. Should it not be possible for complainant and defendant to reach an agreement as to the amounts of the overcharges and undercharges, the matter may be referred to the Commission for further action and the entry of a supplemental order should such be necessary.

O R D E R

Based upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that Davies Warehouse Company be and it is hereby ordered and directed to refund to complainant, Chromecraft Corporation, all storage, handling and accessorial charges collected on the property involved herein in excess of those found applicable in the preceding opinion, together with interest at four percent, and in those instances where charges collected were less than those resulting under the rates hereinabove found applicable, to make such additional collection of charges from complainant as may be necessary to reflect the applicable rates and charges.

IT IS FURTHER ORDERED that Davies Warehouse Company be and it is directed to revise, through its tariff agent, the language of Rule No. 59 of California Warehouse Tariff Bureau Warehouse Tariff No. 28, Cal. P.U.C. No. 165 of Jack L. Dawson, Agent, insofar as said Rule No. 59 relates to defendant's warehouse operations, so as to remove the ambiguities and indefiniteness therein existing, said revision to be made effective not later than sixty days after the effective date of this order.

The Secretary of the Commission is directed to cause a certified copy of this decision to be served upon Jack L. Dawson, Agent, California Warehouse Tariff Bureau, 461 Market Street, San Francisco 5, California.

The Secretary of the Commission is further directed to cause a certified copy of this decision to be served upon defendant in accordance with law and said decision shall become effective twenty days after the date of such service.

Dated at San Francisco, California, this 30th day of December, 1958.

President

Commissioners