

**ORIGINAL**

Decision No. 59616

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

By Decision No. 57799, dated December 30, 1958, in this proceeding, the Commission found the legally applicable charges in connection with numerous lots of furniture which had been stored for account of Chromcraft Corporation, complainant, at the warehouse of Davies Warehouse Company, defendant, and directed defendant to make such refunds to complainant as should be necessary in the light of said findings. The decision cited also directed defendant to eliminate the ambiguities in certain provisions of the warehouse tariff published for its account.<sup>1/</sup>

On January 8, 1959, defendant filed its petition for rehearing of Case No. 6101. The Commission, on January 27, 1959,

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<sup>1/</sup> A typographical error in Decision No. 57799 has been noted. On Page 5 (of the mimeographed decision) the concluding portion of the commodity description quoted in the first paragraph, which reads: "Wood or Steel, with Glass", should read "Wood or Steel, without Glass".

issued its Order Granting Rehearing, which order also suspended the effective date of Decision No. 57799 until further order of the Commission. Rehearing was held before Examiner Carter R. Bishop at Los Angeles on October 23, 1959.<sup>2/</sup>

It was originally contemplated that numerous other warehousemen, who are parties to the tariff here in issue, would seek leave to intervene in the proceeding and offer evidence relative to the Commission's finding of tariff ambiguities. However, such leave has not been sought, and counsel for defendant pointed out, at the rehearing, that the clarification of tariff provisions which the Commission in said Decision No. 57799 had ordered be made for account of defendant, had been accomplished for account of all warehousemen parties to the tariff in question.<sup>3/</sup>

Counsel stated that the issue to be considered at the rehearing was simply the determination of the amount to be paid by defendant to complainant pursuant to the Commission's order in Decision No. 57799. Specifically, the question was whether the two-year or the three-year statute of limitations governed. Counsel for the parties argued their respective positions relative to this question. No evidence was offered at the rehearing.

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<sup>2/</sup> The lapse of time between the issuance of the Order Granting Rehearing and the date of rehearing is attributable to time consumed (1) waiting for other interested warehousemen to file petitions for leave to intervene, and (2) by unsuccessful efforts of defendant to reach a compromise agreement with complainant.

<sup>3/</sup> We take official notice of the fact that, effective April 27, 1959, the wording of Rule No. 59 series of California Warehouse Tariff Bureau Tariff No. 28 was revised. It appears that such revision removes the ambiguities to which the Commission referred in the order in Decision No. 57799.

The reasons advanced by counsel for defendant in support of his contention were as follows:

(1) Decision No. 57799 makes the statement (on Page 1) that "Reparation and rates for the future are sought". Assertedly, proceedings of this type, in which reparation and rates, or rules, for the future are prescribed, can arise only under Sections 728 and 734 of the Code.<sup>4/</sup> The statute of limitations applicable to such proceedings, it is argued, is that set forth in Section 735, which provides, in part, that "All complaints for damages resulting from a violation of any of the provisions of this part, except Sections 494 and 532, shall be filed...within two years from the time the cause of action accrues, and not after."

(2) If the amounts here in issue were under the three-year statute (Section 736), involving merely a straight overcharge or tariff violation, the Commission could only grant damages and not rates for the future.

(3) In Decision No. 57799, defendant was directed to pay interest at the rate of four percent. Assertedly, the Commission has authority to award interest only under Section 734, in connection with which the two-year statute is applicable.

(4) Even if the three-year statute, under Section 736 were applicable, it is pointed out that the section in question refers

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<sup>4/</sup> Section 728 provides in substance and in part that when the Commission finds that the rates or rules charged and applied by any public utility are insufficient, unlawful, unjust, unreasonable, discriminatory or preferential, the Commission shall prescribe the just, reasonable or sufficient rates or rules thereafter to be observed. Section 734 provides, in part, that when the commission has found, after investigation, that the public utility has charged an unreasonable, excessive or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation therefor, with interest from the date of collection if no discrimination will result from such reparation."

to "damages", <sup>5/</sup> which must be proven. In this proceeding complainant has failed to prove that it has been damaged in paying the assessed charges.

Counsel for complainant argued that Decision No. 57799 found that the allegations of unreasonableness (Section 451) and of preference and discrimination (Section 453) had not been proven and that, therefore, the two-year statute governing these sections is inapplicable. Also, he contends that said decision found charges other than those provided in defendant's tariff for the services rendered had been assessed in violation of Section 532 (hereinbefore quoted), and, accordingly, the three-year statute set forth in Section 736 is controlling.

#### Conclusions

As pointed out by counsel for complainant, the allegations of unreasonableness, preference and discrimination set forth in the complaint, as amended, filed in this proceeding, for which a two-year statute of limitations in Section 735 of the Code is provided, were found by Decision No. 57799 not justified. The Commission found that rates and charges had been assessed which were at variance with those applicable under its tariffs, in violation of Section 532, and ordered refunds to be made accordingly. The controlling statute of limitations for such refunds is that for three years as specifically provided in Section 736.

In the aforesaid decision, no rates or rules were prescribed for the future. Defendant was directed to clarify an existing rule. This has been done.

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<sup>5/</sup> Section 736 provides, in part: "All complaints for damages resulting from the violation of any of the provisions of Sections 494 or 532 shall...be filed...within three years from the time the cause of action accrues, and not after. ..." Section 494 has no bearing on this proceeding. Section 532 provides, in part: "Except as...otherwise provided, no public utility shall charge or receive a different compensation...for any service rendered...than the rates...applicable thereto as specified in its schedules on file and in effect at the time. ..."

Defendant contends that "reparation" may be awarded only in connection with proceedings involving the two-year statute. The term "reparation" has long been used in decisions of this as well as other commissions to include refunds of charges arising from violation of tariff provisions. Section 734 (formerly Section 71(a) of the Public Utilities Act) provides that when a public utility has charged an unreasonable, excessive, or discriminatory amount "in violation of any of the provisions of this part" (which includes Section 532) it may direct that "the public utility make due reparation therefor with interest." The word "excessive", as used in Section 734, has been construed to mean, among others, "in excess of the charges specified in the utility's tariff."<sup>6/</sup>

The foregoing quotations from Section 734 also dispose of defendant's argument relative to the Commission's power to direct payment of interest.

Concerning defendant's argument relative to the significance of the word "damages" in Section 736 (three-year statute) it is here pointed out that the word in question is also used in Section 735 (two-year statute). Moreover, in a situation where a finding of violation of tariff provisions is involved, it is not necessary for complainant to prove damages, since the utility is bound by law to observe its published and filed tariffs.<sup>7/</sup>

In the light of the foregoing considerations, we find that in the determination of the amount of reparation due complainant pursuant to the order in Decision No. 57799, the governing statute of limitations is that set forth in Section 736 (three-year statute) of the Public Utilities Code.

We reaffirm the opinions expressed and findings made in Decision No. 57799.

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<sup>6/</sup> For example, see San Francisco Artichoke Growers' Association v. Ocean Shore RR. Co. (8 CRC 519, 521).

<sup>7/</sup> In this connection, see (at page 522) the decision cited in Footnote 6, supra.

The exact amount of reparation due complainant is not of record. Upon refund of overcharges, with interest, 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 amount of said overcharges and interest, 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 evidence of record and upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that the findings made and the conclusions reached in Decision No. 57799, dated December 30, 1958, be and they are hereby reaffirmed.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 12<sup>th</sup> day of February, 1960.

Ernest W. Rago  
President

John P. Mitchell

William J. Walsh

E. J. Fox

Theodore J. Jenner  
Commissioners