

Decision No. 61670

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Larson Ladder Company,  
Inland Ladder Company,  
Sunmaster Products Co.

Complainants

vs.

Merchants Express of California

Defendant

Case No. 7027

O P I N I O N

This proceeding is at issue on the complaint of Larson Ladder Company, Inland Ladder Company and Sunmaster Products Co., alleging that Merchants Express of California, a highway common carrier, published, maintained and assessed an excessive rate in connection with the transportation of stepladders. Complainants seek an order directing defendant to cease and desist assessing charges for the transportation of wooden and aluminum stepladders in less-than-carload shipments greater than those specified for articles rated third class, and to cancel outstanding balance due bills representing the differences in charges computed at third class rates and at double first class rates.

By stipulation filed February 9, 1961, the parties waived public hearing and submitted the matter complained of on the following agreed statement of facts:

STATEMENT OF FACTS

1. Commencing January 4, 1960, and thereafter, defendant transported wooden and aluminum stepladders for complainants from points of origin in California to points of destination in California, both of which are on the line of defendant.

2. The correct descriptions of the articles are:

- (a) Stepladders, wooden or wood and steel combined.
- (b) Stepladders, aluminum or aluminum and steel or wood combined.

3. At all times involved herein the applicable local freight rates for the transportation of the articles described above are and were the class rates published and in effect in Merchants Express of California Local and Joint Tariff No. 2, Cal. P.U.C. No.9.

4. In the order of precedence, the ratings governing the application of the class rates in said Tariff No. 2 are:

- (a) Exception Ratings in Tariff No. 2.
- (b) Exception Ratings in Pacific Southcoast Freight Bureau Tariff No. 1-S, Cal. P.U.C. No. 193.
- (c) Classification Ratings in Western Classification No. 77.

5. For transportation of wooden and aluminum stepladders on February 23, 1960, and subsequently, defendant assessed charges based on the rates in its Tariff No. 2 for ratings of double first class.

6. By Application No. 40351, defendant and 225 common carriers sought authority to publish exception ratings on ladders, among other articles. It proposed to establish the following exception ratings on aluminum stepladders and wooden stepladders without casters or wheels:

	<u>L.C.L. Rating</u>
Ladders, including stepladders, aluminum or aluminum and wood combined, etc.	D1
Ladders, NOIBN, wood or wood and steel combined, etc.	1

7. By Decision No. 59289 dated November 24, 1959, and effective December 14, 1959, the proposal of applicants was denied

but applicants were authorized to establish ratings no greater than those specified, including:

"W. C. No. 55590 Ladders: (Maximum rating  
(as set forth  
(in Western  
(Classification "

8. The above authority expired unless exercised within ninety days after the effective date of said Decision No. 59289, said expiration date being March 14, 1960.

9. On November 24, 1959, and continuously thereafter, the less-than-carload ratings in the Western Classification were as follows:

<u>Item No.</u>	<u>Description</u>	<u>Rating</u>
55590	LADDERS:	
55600	Aluminum or aluminum and steel or wood combined	1½
55610	Collapsed, wood and metal bracing, feet or fittings	2
55620	Magnesium metal or magnesium metal alloy	D1
55630	NOIBN, steel	3
55640	NOIBN, wood or wood and steel combined	2
55670	STEP, other than stepstools, other than aluminum, magnesium metal or magnesium metal alloy	1

10. On November 24, 1959, and continuously thereafter, the less-than-carload rating on stepladders in Exception Sheet No. 1-S was as follows:

<u>Item No.</u>	<u>Description</u>	<u>Rating</u>
1155	STEPLADDERS, metal, wooden or wood and metal combined, folded in packages	3

11. Prior to January 4, 1960, defendant's Tariff No. 2 did not contain an exception rating on ladders other than that described in paragraph 10.

12. On January 4, 1960, defendant issued Original Page 52A of its Tariff No. 2 naming an exception rating of double first class, to become effective February 8, 1960, on stepladders, metal, wooden or wood and metal combined, folded in packages. This tariff page was rejected by the Commission January 13, 1960.

13. On January 21, 1960, defendant issued and filed First Revised Page 52A naming an exception rating of double first class on stepladders as described above to become effective February 23, 1960.

14. On May 17, 1960, by Decision No. 60130, the Commission amended its Decision No. 59289 by striking the following language on Page 5, Appendix A:

"Maximum rating as set forth in  
Western Classification."

and substituting therefor the following:

"Western Classification Ratings  
shall apply."

15. On June 6, 1960, defendant issued Second Revised Page 52A to become effective July 20, 1960, setting forth the following exception rating:

Stepladders, metal, wooden or wood and metal  
combined, folded in packages ..... Western  
Classification Ratings shall apply.

16. Said exception rating on stepladders has been continuously maintained from July 20, 1960, to date.

#### Findings and Conclusions

The maximum rating authorized by Decision No. 59289 for wooden stepladders was first class as provided in Western Classification Item No. 55670, and for aluminum stepladders was  $1\frac{1}{2}$  times first class as provided in Western Classification Item No. 55600.

The publication and maintenance of a rating of double first class by defendant on January 4, 1960, and on January 21, 1960, in its Local and Joint Tariff No. 2 was without authority and was

unlawful, said publication resulting in an increase in rates in violation of Section 454 of the Public Utilities Code.

During the period January 4, 1960 to July 19, 1960, both dates inclusive, the lawful rates to be assessed by defendant for the transportation of wooden stepladders, folded flat, and aluminum stepladders, folded flat, were the rates in defendant's Tariff No. 2 applicable to ratings of third class and any greater rates assessed by defendant for such transportation were excessive within the meaning of Section 734 of the Public Utilities Code.<sup>1</sup>

The publication and maintenance by defendant on June 6, 1960, of the exception rating "Western Classification Rating Shall Apply" as set forth on Second Revised Page 52-A, effective July 20, 1960, was authorized by the Commission in its Decision No. 59289 as supplemented and amended by Decision No. 60130. The latter decision amended the order in the prior decision and contemplated that some action would be taken by applicants therein, and the defendant in particular, to publish ratings on stepladders in conformance with the provisions of the amendment. While Decision No. 59289 provided that the authorities therein granted, namely, the authorization to establish increased ratings and to depart from the long-and-short-haul provisions of the Constitution and of the Public Utilities Code in connection therewith, would expire unless exercised by March 14, 1960, and Decision No. 60130, which was issued May 17, 1960, standing alone does not expressly extend the expiration date nor expressly authorize publication by applicants or departure from the long-and-short-haul clause, the latter decision is a supplemental order amending the prior order and must be construed as carrying forward all of the conditions and limitations of Decision No. 59289 to the extent that they pertained to the subject matter of Decision No. 60130, i.e., the publication of an exception rating on stepladders. Any other

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<sup>1</sup> See *Carnation Co. v S.P. Co.*, 1950.  
50 Cal. P.U.C. No. 345, R.H. Den. 50 Cal. P.U.C. No.443.

unlawful, said publication resulting in an increase in rates in violation of Section 454 of the Public Utilities Code.

During the period January 4, 1960 to July 19, 1960, both dates inclusive, the lawful rates to be assessed by defendant for the transportation of wooden stepladders, folded flat, and aluminum stepladders, folded flat, were the rates in defendant's Tariff No. 2 applicable to ratings of third class and any greater rates assessed by defendant for such transportation were excessive within the meaning of Section 734 of the Public Utilities Code.<sup>1</sup>

The publication and maintenance by defendant on June 6, 1960, of the exception rating "Western Classification Rating Shall Apply" as set forth on Second Revised Page 52-A, effective July 20, 1960, was authorized by the Commission in its Decision No. 59289 as supplemented and amended by Decision No. 60130. The latter decision amended the order in the prior decision and contemplated that some action would be taken by applicants therein, and the defendant in particular, to publish ratings on stepladders in conformance with the provisions of the amendment. While Decision No. 59289 provided that the authorities therein granted, namely, the authorization to establish increased ratings and to depart from the long-and-short-haul provisions of the Constitution and of the Public Utilities Code in connection therewith, would expire unless exercised by March 14, 1960, and Decision No. 60130, which was issued May 17, 1960, standing alone does not expressly extend the expiration date nor expressly authorize publication by applicants or departure from the long-and-short-haul clause, the latter decision is a supplemental order amending the prior order and must be construed as carrying forward all of the conditions and limitations of Decision No. 59289 to the extent that they pertained to the subject matter of Decision No. 60130, i.e., the publication of an exception rating on stepladders. Any other

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<sup>1</sup> See Carnation Co. v S.P. Co., 1950.  
50 Cal. P.U.C. No. 345, R.H. Den. 50 Cal. P.U.C. No.443.

construction would result in Decision No. 60130 being of no force or effect.

On July 20, 1960, and continuously thereafter, the lawful rates for the transportation by defendant over its own line of less-than-carload straight shipments of stepladders, wooden, folded flat, were, and are, the rates in its Tariff No. 2 applicable to a rating of first class; and for transportation of less-than-carload straight shipments of stepladders, aluminum, folded flat, were, and are, the rates in its Tariff No. 2 applicable to a rating of  $1\frac{1}{2}$  times first class. Any rate greater than those specified hereinabove assessed for such transportation is unlawful and is in violation of Section 494 of the Public Utilities Code, and is excessive within the meaning of Section 734 of the Public Utilities Code.

Defendant should be required to refund any charges actually collected, and to waive collection of charges assessed but not collected, for the transportation of wooden or aluminum stepladders which are in excess of the charges at the rates specified hereinabove as applicable. The exact amounts of outstanding balance due bills and reparation due are not of record. Complainants should submit to defendant for verification a statement of the shipments made, and upon cancellation of the balance due bills and payment of reparation, defendant shall notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the award herein made, 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 on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that defendant, Merchants Express of California, shall refund charges actually collected and shall waive collection of charges assessed but not collected on shipments of wooden stepladders and of aluminum stepladders transported on and after January 4, 1960, in excess of the charges which would have accrued at the rates specified in the foregoing opinion as being applicable thereto.

The Secretary is directed to cause a certified copy of this order to be served by registered mail upon Merchants Express of California.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 14<sup>th</sup> day of March, 1961.

[Signature] President  
[Signature]  
George T. Hoover  
Fredrick B. Holdoff Commissioners