

ORIGINALDecision No. 63307

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE CAL-DAK COMPANY, Complainant)
 vs.)
 DELTA LINES, INC., Defendant.)

Case No. 7107

OPINION AND ORDER

By the above-entitled complaint, filed May 2, 1961, The Cal-Dak Company, complainant, alleges that Delta Lines, Inc., assessed charges on 22 shipments of plastic housewares based on a classification rating unlawfully increased. The shipments were between Los Angeles and other points during the period from November 18, 1960 to January 23, 1961. Defendant assessed charges based on a rating of 2½ times 1st Class. Complainant alleges that the charges should have been based on a first class rating. Complainant seeks reparation in the amount of \$221.86.

The complaint alleges that Delta Lines, Inc., is a party to California Common Carriers Tariff No. 10, Cal. P.U.C. No. 2, C. J. Sullivan, Agent, which is governed by Western Classification No. 77, J. P. Hackler, Agent. By Application No. 41933, J. P. Hackler sought increased ratings on a number of items, including Item No. 77670 covering Plastic Articles, N.O.I.B.N., not cellular, expanded or foamed, from first class to various ratings dependent on density. By Decision No. 60820, dated October 4, 1960, Application No. 41933 was granted insofar as most of the proposals were concerned, including Item No. 77670. Complainant herein filed a petition for rehearing on October 14, 1960, in time to stay the effective date of Decision No. 60820. However, J. P. Hackler issued Supplement 18 to Western Classification making the new ratings effective November 15, 1960.

On December 13, 1960, the Commission issued Decision No. 61186 granting rehearing and continuing the suspension of the increased ratings. J. P. Hackler then issued Supplement 21 to the Classification suspending the increased ratings.

Complainant alleges that the rating on plastic articles here involved was increased without authority as required by Section 454 of the Public Utilities Code, as the portion of Decision No. 60820 involving the rating in question did not become effective. Therefore, complainant alleges that the increased rating applied by defendant during the period covered was unlawful, illegally filed and without force.

By answer, filed May 8, 1961, defendant denied the material allegations of the complaint. The matter was held in abeyance pending the outcome of the rehearing. Decision No. 62528, dated September 5, 1961, affirmed Decision No. 60820. However, this action does not affect the facts involved herein. The complaint was then set for hearing, but removed from the calendar when defendant filed its amended answer on January 16, 1962, admitting the allegations in the complaint, and requesting that it be authorized to pay to complainant the sought reparations.

In Carnation Co. vs. Southern Pacific Co., 50 Cal. P.U.C. 345, the Commission found that an increased rate published without the Commission's authorization is an excessive rate within the meaning of Section 734 of the Public Utilities Code, and reparation will be awarded to the extent of the excess. The situation here is the same. Therefore, the Commission finds that the charges assessed by defendant on the shipments listed in the appendix attached to the complaint are excessive to the extent of the difference between the rates charged and collected on the basis of 2½ times first class rating, and what the charges would have been based on a rating of first class, or a total of \$221.86. Defendant will be ordered to pay reparations to complainant in that amount.

Therefore, good cause appearing,

IT IS ORDERED that defendant, Delta Lines, Inc., be and it is hereby ordered and directed to refund to complainant, The Cal-Dak Company, all charges collected on the shipments of plastic housewares here involved in excess of those which would have accrued on the basis of rating such shipments as first class, such refund amounting to \$221.86.

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

Dated at San Francisco, California, this 20th day of February, 1962.

[Signature]
 President

[Signature]

[Signature]

[Signature]

Commissioners

George G. Grover
 Commissioner....., being necessarily absent, did not participate in the disposition of this proceeding.