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ORIGINAL

Decision No. 63308

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Sherwin-Williams Company of California, Complainant, vs. The Southern Pacific Company Pacific Electric Railway Company, Defendants.	)	Case No. 7162

Allen K. Penttila and Lowell J. Norgaard, for complainant.

Charles W. Burkett, Jr. and Frederick E. Fuhrman, for defendants.

O P I N I O N

By the complaint herein, filed on August 7, 1961, The Sherwin-Williams Company of California, complainant, alleges that Southern Pacific Company and Pacific Electric Railway Company, defendants, assessed charges on 45 carload shipments of cans and metal caps which were inapplicable, unjust, unreasonable, prejudicial and disadvantageous, in violation of Sections 451, 453 and 494 of the Public Utilities Code. The shipments in question were transported on and after September 11, 1958 from complainant's plant at San Leandro to the Richfield Oil Corporation at Watson, via Southern Pacific to Los Angeles, thence Pacific Electric to destination. The cans in question were empty one-quart lubricating oil cans, shipped in bulk.[1/] The metal can caps, which were packed in cartons, were transported in mixed shipments with the cans.

1/ Some of the cans in two of the shipments were packed in bags.

Defendants deny the material allegations of the complaint.

Public hearing of the complaint was held before Examiner Carter R. Bishop at San Francisco on November 14, 1961. Evidence on behalf of complainant was presented by its Pacific Coast traffic manager. Evidence in support of defendants' position was adduced through two officials of Southern Pacific Company, namely, an assistant freight traffic manager and its supervisor of freight protection.

Charges were assessed on the basis of carload commodity rates set forth in Item No. 2911 series of Pacific Southcoast Freight Bureau Tariff No. 300, Cal. P.U.C. No. 102, applicable to cans and caps in straight or mixed shipments, such as are involved herein. The rates assessed varied, dependent upon the weight of the shipment and the application of certain increase provisions.[2/] The tariff item in question named rates subject to minimum weights of 14,000 pounds and 20,000 pounds, respectively, for shipments in 40-foot cars. The minimum weights for shipments in 50-foot cars, in which all the shipments herein were transported, were 19,600 pounds and 24,000 pounds, respectively.

Complainant alleges that the lawfully applicable charges are those based on the 10,000 pound or 20,000 pound second class less-than-carload lot rates in effect at time of movement, as provided in Pacific Southcoast Freight Bureau Tariffs Nos. 255-F and 255-G. In support thereof complainant cites Item No. 30537 of Western Classification No. 77, which names a rating of second class

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2/ The increases in question were those established, on various dates, pursuant to formal authorizations by this Commission, following nationwide increases granted by the Interstate Commerce Commission in various proceedings, the last of which was Ex Parte 223.

on less-than-carload shipments of sheet iron or steel cans, not nested, of liquid capacity exceeding one gill but not exceeding one gallon. Under the terms of the classification this rating applies on shipments in barrels, boxes or crates, but not loose.[3/]

Complainant paid charges on the basis of the aforesaid 20,000 pound second class less-than-carload lot rates. Thereafter, defendants issued balance due bills reflecting the differences between the charges assessed and those paid. Complainant now finds that, on the basis of second class less-than-carload rates alleged by it to be applicable, lower charges result, in most instances, under the 10,000 pound lot rates than under the 20,000 pound bracket. Complainant, therefore, alleges that it has sustained overcharges measured by the differences in charges under the above-mentioned respective weight brackets.

Based upon the foregoing allegations complainant seeks an order directing cancellation by defendants of their balance due bills totalling $875.32, and refunds in the amount of $564.30.[4/]

In support of its position that less-than-carload rates are lawfully applicable to the carload shipments of cans and caps here in issue complainant relies upon the provisions of Item No. 125 (formerly Items Nos. 700 and 855) of the above-mentioned 255-series tariffs. Subject to certain exceptions not here pertinent, that item provides that when charges on a carload shipment, based

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3/ The carload ratings provided in connection with the above description apply on shipments of loose cans, as well as those in packages.

4/ Due to certain omissions in its calculation of charges on some of the shipments in issue, under the basis for which it contends, complainant admits that a balance of $36.11 is due defendants on those particular shipments.

on carload rate and actual or authorized estimated weight, exceed the charges that would accrue on the same lot of freight if taken as a less-than-carload shipment, computed upon the weight of the shipment but not less than the minimum weight governing the carload rate, the lower of such charges will apply.

Complainant is cognizant of the fact that Item No. 30537 of the Western Classification does not provide a less-than-carload rating on one-quart oil cans, shipped loose.[5/] It is also aware of the provisions in Item No. 250 of Pacific Southcoast Freight Bureau Exception Sheet No. 1-S, which states that less-than-carload shipments of tin cans will not be accepted unless in packages.[6/] Complainant's traffic manager drew attention, however, to the provisions of Item No. 870 of Tariff No. 255 series, the so-called liberalized packing rule. That item provides, subject to certain exceptions, not relevant here, that articles transported under the rates in said tariff will not be subject to the packing requirements of the Western Classification or of the above-mentioned Exception Sheet, but may be accepted for transportation in any container or shipping form provided that such container or form of shipment will render the transportation of the freight reasonably safe and practicable.

The record shows that complainant ships cans from San Leandro to other consignees in Southern California in addition to Richfield. All such other shipments are made in cartons. The cans

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5/ Items Nos. 30538, 30539 and 30540 of the Western Classification provide less-than-carload ratings on cans exceeding one gallon liquid capacity, shipped losse.

6/ It is generally understood in the trade that so-called "tin" cans are synonymous with "cans, sheet iron or steel" as that expression is used in the Western Classification.

consigned to Richfield are shipped loose at the request of that company, because of circumstances prevailing at its plant. The aforesaid shipments in cartons consigned to other receivers, although loaded in carload quantities, are tendered by complainant as less-than-carload shipments, since trap car service is specified on the bills of lading. On such shipments, accordingly, the carriers assess the less-than-carload rates which complainant seeks herein to apply to cans shipped loose to Richfield's plant.

The record shows further that it is practicable to ship cans loose in carload quantities because of the use of specially designed conveyers, for transporting the cans between warehouse and rail car, and hand tools, by means of which the carloader can pick up several cans at once. Safe transportation to destination is promoted by the use of dividers and bulkheads and by limiting the height of the load so that the top of the lading is approximately two feet from the car roof.

The position of defendants is that the alternative rate provisions of Item 125 of Tariff No. 255 series cannot be applied under the circumstances here in issue since the Western Classification does not provide a less-than-carload rating on one-quart cans shipped loose and Item 250 of the Exception Sheet prohibits the acceptance of such shipments by the carrier. It was the opinion of defendants' traffic witness that if a less-than-carload shipment of tin cans not in packages were, inadvertently, to come into transportation, the applicable rating would be determined by analogy. The commodity, for which a less-than-carload rating for loose shipments is provided, most analogous to one-quart cans is, this witness stated, cans of liquid capacity over one gallon but

not over five gallons. The less-than-carload rating on such cans is one and one-half times first class.

The carrier traffic witness also stated that even if the alternative rate provisions of Tariff No. 255 series were considered applicable, it would be necessary, as required by the rule in question, to observe the carload minimum weights, as minimum, in applying the less-than-carload rates. He introduced an exhibit to show that in most such instances higher charges would result under said less-than-carload rates than under the carload commodity rates which were assessed.

This witness also was of the opinion that the transportation of loose one-quart cans in less-than-carload quantities was neither safe nor practicable, and that obviously this was the reason for the absence of classification ratings for such transportation and for the aforementioned provisions of Item No. 250 of the Exception Sheet. The supervisor of freight protection testified that Southern Pacific records indicate that, of the total movement of tin can shipments handled by that company, approximately 50 percent are in packages and 50 percent are in bulk. In the first six months of 1961, he said, his company paid out in damage claims $921 on shipments of cans in packages and $5,162 on bulk shipments of cans. He was unable to break down the claim payments according to length of haul, or to points of origin and destination.

Discussion, Findings and Conclusions

As hereinbefore stated the shipments here in issue were tendered and transported as carload shipments, and as such were assessed the carload commodity rates provided in Pacific Southcoast Freight Bureau Tariff No. 300. Since that is the tariff naming the applicable carload rates, the alternative rate provisions of the

class rate tariff, Pacific Southcoast Freight Bureau Tariff No. 255 series, as set forth in Item No. 125 of that tariff, are not properly in issue here. Tariff No. 300, however, is subject to Rule 15 of the Western Classification, which provides, in part, as follows:[7/]

> "The charge for a car fully loaded must not exceed the charge for the same lot of freight if taken as an LCL shipment."

The record indicates that the cars involved herein were not loaded to their full visible capacity. The term "fully loaded" as used in Rule 15, however, must be given a practical meaning.[8/] The cars in question were loaded as fully as safety to the lading and convenience of handling would permit. It is apparent, therefore, that for the purposes of Rule 15 the cars were fully loaded.

Since there are no less-than-carload commodity rates in Tariff No. 300, for application of Rule 15 the less-than-carload class rates, if any, in Tariff No. 255 must be used. As hereinbefore mentioned, Item 870 of the latter tariff, the liberalized packing rule, provides that articles transported thereunder will not be subject to the packing requirements of the Western Classification or of the Exception Sheet but may be accepted in any container or shipping form which will render the transportation of the freight reasonably safe and practicable. It is clear from this language that, insofar as the class rates in Tariff No. 255 are concerned, the lack of a less-than-carload rating on loose shipments of one-quart tin cans in the Western Classification and the rule in Item No. 250 of the Exception Sheet barring the acceptance of such shipments are both set aside, at least until a determination has been made as to whether the transportation of such tin cans is reasonably safe and practicable.

7/ By specific provision, Tariff No. 255 is not governed by Rule 15.

8/ See, for example, Haberman v. Pennsylvania RR. Co. (235 ICC 475).

The testimony indicates that, generally speaking, it is impracticable to handle and transport cans loose in less-than-carload quantities. It is obvious, however, that when loose cans are loaded, braced, and unloaded as has been hereinbefore described in connection with the carload shipments here in issue, the transportation of loose cans under the circumstances is practicable. It may also be concluded that when shipments of loose cans are properly braced their transportation in that form of shipment is reasonably safe. The fact that carload rates on tin cans, whether class or commodity, apply on those articles when shipped loose supports that conclusion.

Since the shipments in question satisfy the requirements of Item No. 870 of Tariff No. 255 as to safety and practicability, there are, as to these shipments, less-than-carload class rates, namely second class, available for application of the above-quoted provisions of Rule 15.

Upon careful consideration of the record, including all pertinent tariff provisions, we hereby find as follows:

1. To the extent that lower charges result under the second class 10,000 and 20,000 pound lot rates than under the carload commodity rates, both including applicable surcharges, if any, in effect at time of movement, the shipments of cans identified in Exhibit A attached to the complaint filed herein have been overcharged, in violation of Section 494 of the Public Utilities Code.

2. To the extent, as indicated in Column I of the aforesaid Exhibit A, that charges paid by complainant on any of the shipments here in issue fall short of those resulting under the basis hereinabove found applicable, undercharges exist.

Certain evidence was adduced by complainant and by defendants relative to the allegations that the carload commodity rates assessed by defendants were unjust, unreasonable, prejudicial and disadvantageous. Since those rates have now been found to be inapplicable, the allegations in question need not be considered further.

In the light of the foregoing findings, we conclude that undercharge bills outstanding against the shipments in issue should be canceled or revised and overcharges refunded to complainant as provided in the order which follows.

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:

1. Defendants Southern Pacific Company and Pacific Electric Railway Company shall, as to those shipments listed in Exhibit A of the complaint filed in this proceeding opposite which overcharges are shown in Column J of said exhibit, cancel outstanding balance due bills and pay to complainant The Sherwin-Williams Company of California said overcharges, totalling $564.30.

2. Said defendants shall cancel balance due bills outstanding against those shipments listed in said Exhibit A opposite which no amount is shown either in Column I or in Column J of said Exhibit A.

3. As to those shipments listed in said Exhibit A opposite which undercharges are shown in Column I of said exhibit, defendants shall revise outstanding balance due bills to the basis reflected by the charges shown in Column H of said exhibit, thereafter

collecting from complainant the undercharges, totalling $36.11, shown in said Column I.

4. When the actions directed by the three preceding paragraphs of this order have been taken, defendants shall so advise the Commission.

The Secretary is directed to cause a certified copy of this decision to be served upon Southern Pacific Company and upon Pacific Electric Railway Company 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.

President

Commissioners

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