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ORIGINAL

Decision No. 63603

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Corn Products Company,

Complainant,

vs.

Case No. 7197

Merchants Express of California,

Defendant.

William M. Larimore, for complainant.
Aaron H. Glickman and J. L. Searles, for
defendant.

O P I N I O N

By the complaint herein, filed on October 4, 1961, Corn Products Company, complainant, alleges that Merchants Express of California, defendant, assessed charges on four carload shipments of cooking or salad oil which were in excess of the lawful rate in violation of Sections 494 and 460 of the Public Utilities Code. The shipments in question were transported by defendant during the period from August 10 to November 2, 1960, inclusive, from complainant's premises in San Francisco consigned to the Transportation Officer, Sharpe General Depot, Tracy Annex, at Lyoth, California.^{1/} Reparation is sought.

Defendant denies the material allegations of the complaint.

1/ Lyoth is located in San Joaquin County about three miles southeast of Tracy.

Public hearing of the complaint was held before Examiner Carter R. Bishop at San Francisco on December 20, 1961. With the filing of an exhibit by complainant on December 22, 1961, the matter was taken under submission.

Evidence on behalf of complainant was introduced through a transportation rate analyst and by defendant through its general counsel and its traffic consultant, who acts also as its tariff publishing agent.

Charges were assessed on the basis of fifth class rates of 32 cents and 33 cents per hundred pounds on the first and last three shipments, respectively, subject to a carload minimum weight of 30,000 pounds. The foregoing rates were also subject to surcharges of \$2.00 and \$5.65 per shipment, respectively. These class rates and surcharges, which were in effect from San Francisco to Lyoth at time of movement, were set forth in Merchants Express of California Local and Joint Freight Tariff No. 2, and supplements thereto.

Complainant alleges that the lawfully applicable charges were those computed on the basis of a commodity rate of 21 cents per 100 pounds, minimum carload weight 30,000 pounds, plus various surcharges applicable in connection therewith.^{2/} The sought rate was also published in the above-mentioned tariff and at time of movement applied on shipments of salad oil, cooking oil and other canned goods moving between San Francisco Territory, on the one hand, and Sacramento Valley Territory and San Joaquin Valley Territory, on the other hand, as said territories were defined in the tariff.

^{2/} The surcharges, both under the assessed and sought bases, are not in issue. They will not be further discussed.

While San Francisco is located in San Francisco Territory, Lyoth is located in none of the three territories. Complainant's witness pointed out, however, that by the terms of Item No. 415 of the tariff, in which San Joaquin Territory is defined, Yarmouth, a point more distant from San Francisco than Lyoth, is located in said territory, and that the aforesaid rate of 21 cents was, therefore, applicable from San Francisco to Yarmouth.^{3/}

At the time of movement of the earliest shipment here in issue, the above-mentioned rate of 21 cents was subject to the provisions of Section 2 of Item No. 940 of the tariff. Those provisions were to the effect that commodity rates making specific reference thereto would apply as maximum to directly intermediate points on the same line or route. On Second Revised Page 26 of the tariff is an arrangement of points served by defendant, under the heading, "Geographical Index of Points From And To Which Rates Apply". The tabulation is set up in two columns, the first of which is captioned:

"Highway Route
Index No. and Point"

The second column is headed, "Index Numbers of Adjacent Points". In the first column Lyoth (Index 95) is shown as being located on an un-numbered highway, and in the second column, opposite Lyoth, are shown as adjacent points "90-100", these being the index numbers for Tracy and Yarmouth, respectively. Complainant's witness interpreted the foregoing arrangement as indicating that Lyoth lies between Tracy and Yarmouth on defendant's line or route, and, applying the above-mentioned provisions of Item No. 940 to these circumstances, he concluded that the 21-cent commodity rate was applicable to the first of the four shipments here in issue.

^{3/} The rate in question, as published, applies between all points in San Francisco Territory and those points in San Joaquin Valley Territory which are subject to Rate Basis 100. Yarmouth is so subject.

Effective September 19, 1960, and prior to the times of movement of the second, third and fourth shipments, the tariff page on which the rate of 21 cents was published was amended by providing that said rate, among others, should apply from and to points named only, subject to Section 1 of Item No. 940.^{4/} This change had the effect of making the 21-cent rate non-intermediate in application except as provided in Section 1 of Item No. 940. This qualification was also concurrently attached to a commodity rate of 18 cents per 100 pounds published on the same tariff page applicable from San Francisco to Tracy (Rate Basis 90).

The pertinent portion of Section 1 of Item No. 940 read: "... a point not named which is located between two points on the same line or route TO which rates are named will take the rate applicable TO the higher rated of the two points between which the unnamed point is located." Complainant's witness construed the words "a point not named" to mean a point for which a rate was not provided in the tariff item to which the above-quoted provisions related. Based upon his interpretation of the aforesaid geographical arrangement of points, in which Lyoth, an unnamed point, lies between Tracy and Yarmouth, he concluded that the 21-cent commodity rate to Yarmouth was applicable to Lyoth at the times of movement of the last three shipments.

Predicated upon the foregoing tariff construction complainant requests an order directing refund of the difference between the charges assessed and those which would result from application of

^{4/} This modification was made under the Commission's Order No. STD-96; dated August 23, 1960.

the aforesaid commodity rate of 21 cents. The aggregate of refunds sought on the four shipments in issue is \$278.31.^{5/} ✓

Defendant's traffic consultant testified as to its interpretation of the pertinent provisions of the aforesaid tariff. He pointed out that the rates and rules contained therein reflect, to a large extent, the minimum rates and rules provided in the Commission's Minimum Rate Tariff No. 2. Thus, San Joaquin Valley Territory as defined in defendant's Tariff No. 2 necessarily duplicates the same territory as defined in the aforesaid minimum rate tariff.

The consultant does not construe the "Geographical Index of Points" on page 26 of defendant's tariff as specifying that Lyoth is intermediate between Tracy and Yarmouth. It apparently is his view that the index in question simply indicates that Lyoth is near, or in the vicinity of, the latter points. Furthermore, the consultant construes the intermediate application rules of said tariff, as they related, or relate, to the commodity rates in Item No. 1730, as applying only in connection with unnamed intermediate points which are located in the named territories between which the rates in question are applicable. Moreover, the term "a point not named," as used in Section 1 of Item No. 940, he interprets as meaning "not named in this tariff." Since Lyoth is a point named in the tariff, he concludes that the intermediate rule in question does not authorize the application, to Lyoth, of the commodity rate of 21 cents published to Yarmouth.

Defendant's consultant made certain other representations regarding the construction to be placed on provisions of the carrier's

^{5/} The amount specified in the complaint is \$276.36. However, this was recalculated to the above figure in late-filed Exhibit No. 5.

tariff and as to corresponding provisions of the aforesaid minimum rate tariff. It is not deemed necessary, for the purposes of this opinion, to set forth those representations. They have been given adequate consideration. In the light of his interpretation of the carrier's tariff, the consultant was of the opinion that charges on the shipments here in issue had been properly assessed on the basis of the fifth class rates.

Conclusions

The shipments in question were transported by a highway common carrier, which, in assessing transportation charges therefor, is required by Section 494 of the Public Utilities Code to observe without deviation the rates and rules set forth in its published and filed tariff. Thus the applicable rates and charges must be determined without reference to the Commission's Minimum Rate Tariff No. 2.

As previously mentioned, defendant denies that the geographical index of points in its tariff may be used to determine the specific location of Lyoth in relationship to other points served by defendant. On the contrary, it should be clear that the purpose of such a geographical index of points in the tariff of a highway common carrier is to enable the tariff user to ascertain the precise location of a particular point with relationship to other points served by such carrier, in the application of so-called intermediate rules such as those invoked by complainant. The very caption of page 26 indicates that it is a geographical arrangement of points served and the caption of the second column, reading "Index Numbers of Adjacent points" (emphasis supplied), shows that between the points in that column and the corresponding point shown opposite thereto in the first column there are no other points served by the carrier in question.^{6/}

^{6/} Webster's New Collegiate Dictionary states, "Adjacent may or may not imply contact but it always implies absence of anything of the same kind in between."

The arrangement on page 26 clearly shows that Lyoth is intermediate between Tracy and Yarmouth on the route of defendant, also that Yarmouth is more distant than Lyoth from San Francisco on said route.

The construction which defendant places upon the above-mentioned intermediate application provisions of Item No. 940 of defendant's tariff is not sound. There is nothing in the language of Section 2 of that item, as applied to the rates in Item No. 1730 in effect at the time the first shipment herein was made, which required the intermediate point to be located in San Joaquin Valley Territory. With reference to the pertinent provisions of Section 1 of that item, invoked in connection with the provisions of Item No. 1730 series which were in effect when the last three shipments moved, we are of the opinion that by the words "a point which is not named" is meant a point which is not named in the item containing the rates to which said intermediate provisions are being applied.

The shipments here in issue were consigned to the Transportation Officer, Sharpe General Depot, Tracy Annex. The pickup and delivery limits of Merchants Express at Lyoth, by the provisions of Item No. 420 of defendant's tariff, include all locations within a radius of one mile of the established railroad depot at that point. An examination of a map of record discloses that Sharpe General Depot lies entirely within said limits.

Upon careful consideration of the record, we conclude that complainant has been overcharged, in violation of Section 494 of the Public Utilities Code, with respect to the four shipments embraced by the complaint herein, in the amount of \$278.31, which amount is the difference between the charges paid by complainant and those which

would have accrued on the basis of the sought rate of 21 cents, plus surcharges, hereby found to be the basis applicable under defendant's aforesaid tariff, to the transportation in question.

Defendant will be ordered to make refund to complainant in the above-stated amount, plus interest at six percent per annum.

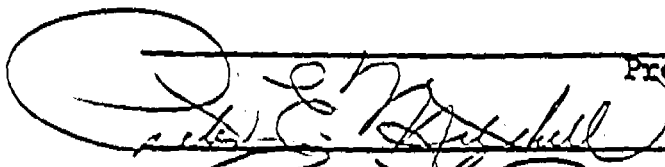
O R D E R


Based upon the evidence of record and upon the findings and conclusions set forth in the preceding opinion,

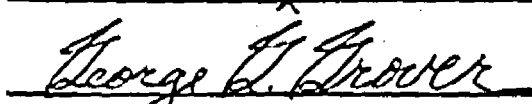
IT IS ORDERED that defendant Merchants Express of California shall pay to complainant Corn Products Company the sum of \$278.31, plus interest at six percent per annum, as refund of overcharges collected with respect to the shipments involved in this proceeding. ✓


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

Dated at San Francisco, California, this 34th day of APRIL, 1962.



President






Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.