

ORIGINALDecision No. 67400

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VICTOR INDUSTRIES CORPORATION)
OF CALIFORNIA,)

Complainant,)

vs.)

MERCHANTS EXPRESS OF CALIFORNIA,)
and VALLEY EXPRESS CO.,)

Defendants.)

Case No. 7715
(Filed September 13, 1963)C. D. Eldred and William M. Larimore, for
complainant.Aaron H. Glickman and George E. Sloat, for
Merchants Express of California; F. S.
Kohles, for Valley Express Co., defendants.O P I N I O N

This matter was heard and submitted before Examiner Lane in San Francisco on February 21, 1964.

Victor Industries Corporation of California complains that defendants assessed rates in excess of their lawfully published tariff rates on certain shipments of empty, used packages moving from various points in California to complainant's plant at Chico. It alleges that defendants assessed varying levels of rates instead of applicable rates based on a rating of 1/2 of fourth class. It seeks reparation (plus interest) of the difference between the amounts paid and the amounts allegedly applicable under defendants' tariffs.

Defendants deny the material allegations. In their answers and at the hearing, they moved that the complaint be dismissed.

Complainant manufactures various metal and plastic tubes at Chico which are used to package commodities such as tooth paste, petroleum jelly and oil paint pigments. It sells the empty tubes to various other manufacturers for packaging of the latter's products. The empty tubes are individually packaged by complainant in fibreboard boxes which are partitioned by inner fillers. Six or more of the fibreboard boxes with inner fillers are in turn packed in larger fibreboard boxes or cartons.^{1/} When the tubes are removed at destination, the outer cartons containing the innerboxes with inner fillers are returned to complainant at Chico. This complaint involves the rates assessed by defendants on shipments of these empty containers from various points in California to complainant's plant at Chico.

The tariffs of each of the defendants provide a rating of 1/2 or 50 percent of fourth class on less-than-carload shipments of certain specified second-hand carriers returning from or forwarded for a paying load.^{2/} The application of the rating is further conditioned by the requirement that the return movement must be over the same line as the outbound movement.

1/ Complainant uses various sizes of inner fillers, inner boxes and outer boxes to accommodate and ship different sizes of empty tubes. All of the inner and outer boxes involved exceed one inch in depth and 15 united inches, length, width and depth added.

2/ The tariffs involved are Merchants Express of California Local and Joint Freight Tariff No. 2, Cal. P.U.C. No. 9; F. S. Kohles, Agent, Local and Joint Express and Freight Tariff No. 9-B, Cal. P.U.C. No. 9 (series of Valley Express Co.); Pacific Southcoast Freight Bureau, Agent, Exception Sheet No. 1-S, Cal. P.U.C. No. 193 (series of J. P. Haynes); Pacific Coast Freight Bureau Exception Sheet No. 1, Cal. P.U.C. No. 4 of C. R. Nickerson, Agent; Western Motor Tariff Bureau, Inc., Agent, Exception Sheet 1-A, Cal. P.U.C. No. 18; Western Classifications Nos. 77 and 78, issued by Western Classification Committee, Agent; and National Motor Freight Classification A-7 (CAL), Cal. P.U.C. No. 2 of National Motor Freight Traffic Association, Inc., Agent.

Two fundamental questions are involved. First, whether or not the commodity shipped is included in the tariff items naming the 1/2 or 50 percent of fourth class rating. Second, if so, whether or not the particular shipments involved in this proceeding meet the other requirements specified in connection with the application of the rating in question.

There is no real dispute as to the description of the commodity shipped. It consists of set up, fibreboard boxes, with inner fillers (partitions), in boxes.

This commodity is not described specifically by name in the tariff items naming the sought rating. Complainant alleges that the commodity is covered by the entry of "Carriers, NOIBN" contained in the involved tariff items. The term "NOIBN" is defined as "not otherwise indexed by name" in the governing exception sheet or classification. A traffic consultant for complainant testified that he was unable to find a specific entry in either the exception sheet or classification naming fibreboard boxes, set up, with inner fillers. In the absence of such a specific entry, he said, the description "Carriers, NOIBN" was applicable.

The Commission finds that the commodity in question is a combination article consisting of fibreboard boxes, set up, and paper partitions, set up. While the governing classification does not contain a single entry naming the combination article, it does contain separate entries specifically naming each of the commodities individually.^{3/} The tariffs involved are subject to rules providing^{4/} for the determination of ratings and rates on combination articles.

^{3/} The boxes are described in Item 14550 of Western Classifications Nos. 77 and 78 and in Item 29288 of National Motor Freight Classification A-7. The partitions are described in Item 31470 of the Western Classifications and Item 54800 of the National Motor Freight Classification.

^{4/} The provisions relating to combination articles are contained in Rule 18 of Western Classifications Nos. 77 and 78 and in Rule 100 of National Motor Freight Classification A-7.

Inasmuch as the boxes and partitions are indexed by name in the classification, they are not covered by the entry "Carriers, NOIEN" in the tariff items naming the 1/2 or 50 percent of fourth class rating. The Commission finds that the commodity involved in this proceeding is not subject to the rating of 1/2 or 50 percent of fourth class sought by complainant. Discussion of the evidence relating to the second question enumerated above becomes unnecessary.

The Commission concludes that the complaint should be dismissed.

ORDER

IT IS ORDERED that the complaint in Case No. 7715 is dismissed.

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

Dated at San Francisco, California, this 16th day of June, 1964.

Robert A. [Signature] President
George H. [Signature]
Frederick B. [Signature]

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.