

ORIGINALDecision No. 67936

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

Case No. 5432
(Petition for
Modification No. 343)
(Filed June 4, 1964)

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of property in Los Angeles and Orange Counties (transportation for which rates are provided in Minimum Rate Tariff No. 5).

Case No. 5435
(Petition for
Modification No. 57)
(Filed June 4, 1964)

A. D. Poe, C. D. Gilbert and H. F. Kollmyer, for
California Trucking Association, petitioner.

Eugene A. Read, for California Manufacturers
Association; and Chas. H. Costello, for
Continental Can Co., protestants.

Henry E. Frank, for the Commission staff.

O P I N I O N

These petitions were heard and submitted August 14, 1964 before Examiner Thompson at San Francisco. Notices of the hearing were served in accordance with the Commission's procedural rules. Petitioner is California Trucking Association (CTA). Protestants are California Manufacturers Association (CMA), and Continental Can Company (Continental). Evidence was presented by petitioner and by protestants.

The Commission staff participated but did not offer evidence or take any position in this matter.

CTA requests that the description "Carriers, NOIBN" be deleted from Item No. 320 of Exception Ratings Tariff No. 1. Carriers (used packages), listed in Item No. 320, secondhand, empty, returning or when shipped for a return paying load are accorded low rates in Minimum Rate Tariff No. 2 and in Minimum Rate Tariff No. 5. "Carriers, NOIBN", are shipping containers that are not otherwise indexed by name or described by name in Exception Ratings Tariff No. 1 or in the governing classification (NFMC A-7, Cal.). The deletion of "Carriers, NOIBN" from Item No. 320 would not have any effect upon the ratings or the rates of used shipping containers, returning, that are indexed or listed by name. With respect to those containers that are not so indexed or described the proposed change would result in substantial increases in rates.

Petitioner alleged that it is not the purpose of the sought change to increase the rates on carriers or containers, listed in Item No. 320, including those presently and correctly described as "Carriers, NOIBN". It asserted that there is presently uncertainty and confusion among carriers and shippers concerning just what articles are included in the description "Carriers, NOIBN". It suggests that by deleting that description and by setting forth more specific descriptions in Item No. 320, the confusion and uncertainty will be alleviated. In connection with the latter, an employee of petitioner testified that he had made inquiries concerning whether empty used containers moving under the description "Carriers, NOIBN" were being transported. He said that it had been reported to him that only one

type container properly designated as a "Carrier, NOIBN" was being shipped regularly and that is a bulk commodity shipping container made of steel. He suggested that this article be accorded the same exception rating as aluminum bulk commodity shipping containers.

With respect to the uncertainty of carriers and shippers regarding the application of the description "Carriers, NOIBN", petitioner directed attention to Victor Industries Corp. v. Merchants Express, et al, (Unreported) Decision No. 67400, dated June 16, 1964 in Case No. 7715.

A representative of Continental testified that it makes use of several types of containers for shipments of tin plate, cans and can ends and that those containers are returned empty for return paying loads. He stated that he cannot find any item in Exception Ratings Tariff No. 1 or in the governing classification that properly describes those articles or indexes them by name so that he has described those containers on shipping documents as "Carriers, NOIBN", empty, returning for an outbound paying load.

Continental and CMA contend that there is no more uncertainty or confusion regarding articles covered by "Carriers, NOIBN" than there is regarding any other article described NOIBN in the classification. It was asserted that the term "Carriers, NOIBN" has been used in Pacific Southcoast Freight Bureau Exception Sheet No. 1 series for many years. That publication governed the class rates in Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 5 prior to the issuance by the Commission of Exception Ratings Tariff No. 1 in 1963. It was stated that new and different types of containers are continuously being developed and that it is desirable, and in the interests of carriers and shippers alike, that this development not be hindered. Continental

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contends that the deletion of "Carriers, NOIBN" from Item No. 320 will result in higher rates for new containers that are not yet indexed or described by name in Item No. 320 and thus would hinder the experimental use of new containers.

As indicated above, petitioner asserted there is uncertainty and confusion regarding the application of rates on articles that have been used or are to be used as carriers or containers for shipping purposes and the protestants deny that there is any such uncertainty or confusion other than the usual and normal differences of opinion among carriers and shippers regarding the application of rates. Other than the general assertion made by the witness for petitioner, the only indication of any uncertainty or confusion is the reference to the Victor Industries case. That case involved an action brought by a shipper against two common carriers for reparation in connection with shipments of articles in return movement that were used as containers for goods transported by the carriers on outbound movements. The issue there was whether the containers were indexed by name in the tariff or the governing classification. This clearly is a case where the complainant and defendants differ in their opinions on the applicability of certain rates and tariff provisions. It could be maintained that there is some uncertainty regarding the application of the ratings on "Carriers, NOIBN" to the movements involved in the complaint. That circumstance, however, is not sufficient to justify amending the provisions of Item No. 320 in the manner suggested by petitioner.^{1/}

^{1/} Rehearing in Victor Industries v. Merchants Express, et al was granted by the Commission. Rehearing is scheduled for October 1, 1964.

The crux of the matter presented by petitioner is the question of whether the low ratings prescribed in Item No. 320 should apply, as is the case now, to all used carriers or containers, returning, except those specifically indexed by name in the governing classification, or whether those ratings should apply only to those carriers or containers specifically described in Item No. 320. The present situation is an exception to the usual practice of according ratings to articles NOIBN. Ordinarily in rate making, articles that are specifically described or indexed by name are accorded lower rates than those described NOIBN, which can be thought of as a "catch-all" classification. For over twenty years a different treatment has been accorded used, secondhand, empty, carriers returning from an outbound paying load moving in California. While usage, in and of itself, is not sacrosanct, nevertheless, there should be good reason before discontinuing a practice that has so long endured. Petitioner has not presented good reason or justification for the action sought.

We find that it has not been shown that the deletion of "Carriers, NOIBN" from Item No. 320 of Exception Ratings Tariff No. 1 will result in just, reasonable and nondiscriminatory minimum rates to be charged by highway carriers for the transportation of carriers, used, secondhand, empty, not otherwise indexed by name in the governing classification when such carriers are returning or when shipped for a return paying load on the same line or lines as the outbound movement.

We conclude that the petitions herein should be denied.

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O R D E R

IT IS ORDERED that Petition for Modification No. 343 in Case No. 5432 and Petition for Modification No. 57 in Case No. 5435 filed by California Trucking Association on June 4, 1964 are denied.

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

Dated at Los Angeles, California, this 30th
day of SEPTEMBER, 1964.

Fredrick B. Halaloff
President
John E. Mitchell
George C. Traver
William L. Quinn
Commissioners

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