

**ORIGINAL**

Decision No. 68183

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Victor Industries Corporation of )  
California, )

Complainant, )

vs. )

Case No. 7715

Merchants Express of California, )  
and Valley Express Co., )

Defendants. )

(Appearances as shown in Decision No. 67400)

OPINION ON REHEARING

Decision No. 67400, dated June 16, 1964, dismissed the above complaint upon a finding that the commodity involved (set up fibreboard boxes, with inner fillers (partitions) in boxes) is not embraced within the commodity description "Carriers, NOIBN" in defendants' tariffs and was not entitled to rates based upon a less carload exception rating of ½ or 50% of fourth class. Rehearing was granted as to transportation performed by defendant Merchants Express of California (Merchants).

Rehearing was held and submitted before Examiner Mallory at San Francisco on October 1, 1964. Complainant requested that the complaint be dismissed with respect to defendant Valley Express Co. Evidence was presented by complainant to the following effect. At the time of shipment Merchants' Tariff contained a carload exception rating of Class E, minimum weight 12,000 pounds, applicable to "Carriers (used packages), viz.:

Boxes, with or without fillers, second-hand, empty, returning, or when shipped for return paying load."<sup>1</sup>

Rates based upon this exception rating produce lower charges than the rates assessed by Merchants on 16 shipments enumerated in Exhibit A of complainant's Petition for Rehearing.<sup>2</sup> Complainant alleges it has been overcharged by the amount that charges computed upon the carload exception rating now asserted to be applicable exceed the charges originally assessed. Complainant asks that defendant be ordered to refund the alleged overcharges, and also to make refund on other similar shipments transported by Merchants subsequent to the shipments included in the complaint.<sup>3</sup>

Merchants does not challenge the basis of rates now sought by complainant. Defendant, however, moved that the complaint be dismissed on the ground that complainant failed to seek refund on that basis in the original complaint, and should now be barred from recovery. Defendant asserts that complainant was correctly denied refund of overcharges on the basis originally sought.

Refund is sought under Section 494 of the Public Utilities Code, which states, in part, as follows:

"No common carrier shall charge, demand, collect, or receive a different compensation for the transportation of ... property ... than the applicable rates ... and charges specified in its schedules filed and in effect at the time ... ."

---

1 Item 290-A, Supplement 56 of Pacific Southcoast Freight Bureau Exception Sheet 1-S, Cal. PUC No. 193 (series of J.P. Haynes, Agent), governing Merchants Express of California, Local and Joint Freight Tariff No. 2, Cal. PUC No. 9. Under the latter tariff articles rated Class E are charged at the Class D level.

2 A total of 26 shipments transported by Merchants are involved.

3 The complaint covers shipments moving between March 9, 1960 and January 2, 1962.

We find that the articles shipped are described in and subject to defendant's tariff provisions under which Class D rates, subject to a minimum weight of 12,000 pounds per shipment, are applicable. Common carriers are required to charge and collect rates and charges no greater than those specified in their tariffs. It is incumbent upon defendant to revise its charges on the shipments in question to the proper tariff basis, regardless of whether such basis was the one originally contended for by complainant.

The Commission concludes that defendant Merchants Express of California should be ordered to make refund of the charges assessed on shipments enumerated in Exhibit A of complainant's Petition for Rehearing to the basis found herein to be applicable, and that defendant Merchants should also make refund of charges collected in excess of those found applicable herein on shipments moving subsequent to the shipments included in the complaint. Interest on the amounts so refunded will be required. The complaint should be dismissed as to defendant Valley Express Co.

O R D E R

IT IS ORDERED that:

1. Defendant Merchant Express of California is directed to refund to complainant Victor Industries Corporation of California charges collected on shipments of set up fibreboard boxes, with inner fillers (partitions) in boxes, in excess of those found to be applicable in the preceding opinion, including shipments transported by said defendant subsequent to the dates of shipment enumerated in the complaint, with interest at six percent per annum.
2. When the action directed by ordering paragraph 1 above has been taken defendant Merchants Express of California shall so advise the Commission in writing.

3. The order in Decision No. 67400 in this proceeding is rescinded.

4. The complaint is dismissed as to defendant Valley Express Co.

The Secretary of the Commission is directed to cause a certified copy of this order to be served upon Merchants Express of California and Valley Express Co. in accordance with law and said order shall become effective thirty days after the date hereof.

Dated at San Francisco, California, this 2nd day of NOVEMBER, 1964.

Frederick B. Hololoff  
President  
John E. Heston  
Wesley B. Page  
George G. Grover

Commissioners

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