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Decision No. 68690

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Edwin Rand, aka A. O. Smith
 Complainant,
 vs.
 Beverly Hills Transfer & Storage Co.
 Defendant.

Case No. 7929
(Filed June 18, 1964)

Edwin Rand, in propria persona, complainant.
C. S. Tinsman, for Beverly Hills Transfer & Storage Co., defendant.

O P I N I O N

This proceeding is a complaint of Edwin Rand (also known as A. O. Smith) against Beverly Hills Transfer & Storage Company, a household goods carrier, concerning charges assessed by defendant in connection with the transportation and storage of complainant's household goods.

Public hearing was held and the matter submitted before Examiner Mallory at Los Angeles on November 30, 1964. At the hearing, complainant conceded that the total charges paid by him to defendant (although alleged in the complaint to be \$216.60) were actually the following:

Packing Materials	\$ 43.92
4% Sales Tax	1.76
Packing Labor	18.00
Cartage: 6-4-62	
Van and 2 men 5-1/4 hours	
at \$14.50 per hour	76.13
Storage 6-4 to 7-4-62	19.75
Warehouse Handling	29.63
Insurance S 7814 - \$5,000.00	
Rate - .03½ per \$100	1.75
	<u> </u>
	\$190.94

Complainant alleges that the charges assessed and paid on the shipment are incorrect in the following respects:

Packing Materials: (1) charges should not have been assessed for packing materials supplied at complainant's residence, as complainant was advised that the transportation rates quoted included such materials; (2) charges collected for packing materials furnished in connection with repacking of the goods upon removal from defendant's warehouse should not have been assessed, as none of the goods were repacked from the original containers in which the goods were packed by defendant's employees at complainant's residence.

Packing Labor: (1) the charges assessed for packing at complainant's residence are excessive insofar as they exceed \$5.50 per man per hour for two men; charges based on \$14.50 per hour for a van and two men should not have been assessed; (2) packing labor at defendant's warehouse should not have been assessed, because the goods were not repacked upon removal from storage.

Warehouse Storage and Handling: Charges based upon permanent storage in defendant's warehouse should not have been assessed; warehouse charges should have been based on lower storage-in-transit rates, as storage-in-transit was requested at time of shipment.

The overcharges alleged in the complaint^{1/} are as follows:

1. Packing Materials	\$ 59.34
2. Packing Labor	33.00
3. Warehouse Handling	29.63
4. Overcharge on prepacking, labor and cartage	<u>29.63</u>
Subtotal	151.60
Less Storage-in-transit charges based on 50 cents per 100 pounds for 2,530 pounds	<u>12.65</u>
Alleged Overcharge	\$138.95

The complaint also contains allegations concerning defendant's failure to submit documents of insurance and to forward insurance claims. Inasmuch as no affirmative relief is requested with respect to these portions of the complaint, they will not be discussed or acted upon further herein.

Defendant denies all material allegations in the complaint.

Testimony was presented by complainant and by three employees of defendant. Copies of pertinent documents concerning the shipment were received in evidence.

The evidence shows complainant on several occasions discussed with representatives of defendant the movement of certain household goods from 5128 Otsego Court, Encino; that on or about April 6, 1962, complainant appeared at defendant's place of business and requested service on April 10, 1962; that as a result of this request, a document bearing the name of defendant and the number 19202 and entitled "confirmation of shipment, and rate quotation, shipping order and/or freight bill," was prepared by defendant and was signed by complainant (under the signature of A. O. Smith) and

^{1/} At the hearing, complainant continued to allege these overcharges, although, as above noted, he modified the allegations of the complaint as to the amounts he had paid defendant.

by an employee of defendant; that the goods were not transported on April 10, 1962, but were packed and moved on June 4, 1962, from 5128 Otsego Court to defendant's warehouse in Encino; that a vehicle and two men were furnished and used; and that charges for packing (including incidental materials), transportation, storage (including storage labor), and insurance, totaling \$190.94, were paid for the services involved in the complaint.

The facts in dispute concerning the transaction are: whether the above document, when signed by complainant, was completed as to origin, destination, rates to be assessed, and equipment and materials to be furnished; whether this written order was cancelled when complainant called at defendant's office on or about May 28, 1962, or merely postponed; whether a new order and agreement resulted when a request for service was made upon defendant by complainant on or about May 28, 1962; whether complainant ordered storage-in-transit or permanent storage of his goods; and whether the charges for packing, packing materials, packing labor, and storage were correctly assessed.

The original shipping document, submitted in evidence as Exhibit No. 2, is completed in full. It shows charges of \$76.13, based upon the furnishing of a van and two men for 5-1/4 hours at a rate of \$14.50 per hour; insurance premium, \$1.75; one-month storage, \$19.75; and warehouse handling, \$29.63. To support the number of hours, the document contains a graph showing the following: driving time 10:00 a.m. to 10:15 a.m.; packing 10:15 a.m. to 12:00 noon; loading time 12:00 noon to 2:00 p.m.; driving time 2:00 p.m. to 2:15 p.m.; and unloading time 2:15 p.m. to 3:00 p.m. This document shows that the goods were shipped from "A. O. Smith,

5128 Otsego Court, Encino," to "same, storage." The person to be notified is shown as "H. E. Anderson, 23016 Grinford Street, West Hollywood, Di 0-2223."

Under the rules in Minimum Rate Tariff No. 4-A, which governs the transportation of used household goods, a confirmation of shipping instructions and rate quotation must be furnished by the carrier to the shipper prior to transportation. Among other things, this document must contain the following information: date prepared; date and time of pickup requested; name and address of carrier; names of shipper and consignee; name and address or telephone number of party to be notified; description of notification and delivery arrangements; points of origin and destination; description of shipment; description of transportation and accessorial services to be performed; rates and charges quoted; insurance; and signatures of carrier and shipper. Under the tariff, a shipping order and freight bill must also be issued containing, in addition to the information stated in the preceding sentence, the actual number of hours and the rates and charges assessed. The tariff authorizes the combining of the confirmation of shipping instructions and rate quotation and the shipping order and freight bill in a single document. Under the tariff, rates and charges no higher than those set forth in the rate quotation and no lower than the minimum rates named in the tariff must be assessed. If the carrier fails to issue a rate quotation, the minimum rates are applicable. The tariff requires the assessment of charges for packing materials used.

Complainant claims that Exhibit No. 2, when signed by him, contained only the entries pertaining to the origin and destination of the shipment and the party to be notified, and

contained no rate quotations relating to transportation, storage, warehouse handling, or insurance. Defendant asserts that at the time the document was issued and signed it contained notations showing the number of men to be furnished, a quoted rate per hour for transportation, and quoted charges for one-month storage and warehouse handling.

Storage-In-Transit

There is a dispute concerning what data were shown on the document when the signatures of complainant and defendant's employee were affixed and whether this document or some later oral contract covered the services performed. The underlying issue is whether it was the intent of the complainant to order storage-in-transit or permanent storage.^{2/}

The record shows in connection with discussions between complainant and defendant prior to the movement of the goods that complainant was not certain of the ultimate destination of the goods and mentioned several possible locations where the goods might be sent; that complainant desired to place the goods in storage until he decided where the goods were to be shipped; and that at the time service was originally ordered complainant did not know how long the goods were to be stored. Defendant claims that, based upon this situation, it inserted in the above-described shipping document in the space for "delivery address," the word "storage." Permanent storage was accorded and charges therefor were assessed. Defendant admits that the term "storage" on the

^{2/} The record shows that subsequently the goods were removed from storage and were transported by Allied Van Lines, Inc. to New York State and later returned to complainant at Encino. The movements to and from New York were interstate in character and are not subject to the jurisdiction of this Commission.

shipping document could embrace either storage-in-transit or permanent storage; but defendant claims that if storage-in-transit was to be accorded, the shipping document would have been issued in the name of the linehaul carrier, namely Allied Van Lines, Inc., which would then have been responsible for the through transportation service from origin to ultimate destination, and that if storage-in-transit had been furnished by Allied, it would have been subject to the provisions of Allied's interstate tariffs.^{3/}

Complainant admits that the service ordered on May 28, 1962 was the same as that ordered on April 6, 1962, when Exhibit No. 2 was initially prepared and signed.

Under the provisions of Minimum Rate Tariff No. 4-A, the carrier is required to furnish a confirmation of shipping instructions and rate quotation to the shipper prior to transportation. It appears that the document prepared on April 6, 1962 was for this purpose. Complainant did not dispute that the entry "to same, storage" appeared on this document when he signed it, nor that he had no definite ultimate destination in mind on April 6, 1962, on May 28, 1962, or on the date of shipment. Permanent storage was accorded by defendant based upon complainant's instructions concerning the transaction. It has not been shown that storage-in-transit was requested or ordered by defendant.

Packing Materials

Under the minimum rate tariff, a charge must be made for the packing materials furnished by defendant to pack complainant's

^{3/} If storage-in-transit were ordered in connection with the through movement of complainant's goods to ultimate destination (New York), the entire service would be interstate in character and not subject to the jurisdiction of this Commission. Allied's interstate tariffs provide rates of 60 cents per 100 pounds for storage-in-transit for a period of one month or less.

goods at his residence. Complainant's position in this respect is incorrect. Complainant also disputed the charges for repacking materials and repacking labor assessed at defendant's warehouse, allegedly necessary to render safe the transportation of the goods to final destination. We have indicated heretofore that permanent storage of the goods was accorded. Transactions involving the storage of the goods and subsequent repacking of the goods for interstate shipment are not subject to the jurisdiction of this Commission, inasmuch as the Public Utilities Code exempts from regulation transactions in interstate commerce and also exempts the warehousing of secondhand household goods or effects.^{4/}

Packing Labor

Complainant contends that the transportation charges based on \$14.50 per hour should be reduced to \$11.00 per hour (based on the rate of \$5.50 per-man per-hour for two men) for the time at his residence during which packing services were performed by defendant's driver and helper. This assertedly is supported by the graph on Exhibit No. 2 which shows that "packing" was performed between the hours of 10:15 a.m. and 12:00 noon. In addition, complainant asserted that defendant's employees actually worked through their lunch hour to 1:00 p.m. to complete packing, and that at 1:00 p.m. loading commenced. The driver testified that although complainant requested him and his helper to work through their lunch hour, they had completed packing by noon and then immediately began loading the goods in the "easy-storage" containers on defendant's flat-bed truck. (Assertedly these containers were used instead of a household goods van bearing defendant's name and business location because complainant

^{4/} Public Utilities Code, Sections 239(b) and 5111.

requested that unmarked equipment be furnished.) In the circumstances, it appears that the time records on Exhibit No. 2 are correct. The charges assessed, however, should be revised to the basis of \$5.50 per-man per-hour for the time packing was performed at complainant's residence.

Findings and Conclusions

Based upon the evidence of record in this proceeding, we find:

1. The transportation service rendered by defendant to complainant was the packing and movement of used household goods and personal effects from 5128 Otsego Court, Encino, California to defendant's warehouse in Encino, California.
2. The "confirmation of shipment, and rate quotation, shipping order and/or freight bill," (Exhibit No. 2) was prepared for and covered the transaction described in Finding 1 hereof.
3. Permanent storage was accorded complainant's goods at defendant's warehouse; storage-in-transit of such goods was not agreed to by the parties prior to shipment, nor was it provided by defendant.
4. The charges complained of with respect to warehouse handling and storage are warehouse charges.
5. Charges for repacking labor and materials were incurred upon removal of complainant's goods from storage for shipment to a point outside of this state.
6. Packing containers were furnished by defendant at complainant's residence for the packing of complainant's goods, and such containers were of the type for which a charge must be made under the provisions of the governing minimum rate tariff.

7. The confirmation of shipment and rate quotation issued prior to transportation did not specify the rate per hour to be assessed for packing; under the provisions of Minimum Rate Tariff No. 4-A, the maximum rate which may be assessed for such service is the rate of \$5.50 per hour set forth in said tariff.

8. Transportation charges based on a rate of \$14.50 per hour for a vehicle and two men were billed instead of \$11.00 per hour for two men (\$5.50 per-man per-hour) for the time packing services were performed by defendant's employees at complainant's residence.

9. Transportation charges were assessed for loading time, double driving time, and unloading time based upon $3\frac{1}{2}$ hours, whereas the actual chargeable time for these services was $3\frac{1}{2}$ hours.

Based upon the above findings of fact, we make the following conclusions of law:

1. Defendant should be ordered to refund to complainant the sum of \$6.13, representing the difference between the charges at \$14.50 and at \$11.00 per hour for the time packing service was performed at complainant's residence, and the sum of \$3.62, representing the difference between $3\frac{1}{2}$ hours and $3\frac{1}{2}$ hours at the rate of \$14.50 per hour for loading time, double driving time and unloading time.

2. Section 239(b) of the Public Utilities Code specifically excludes from the jurisdiction of this Commission authority to regulate the charges of corporations engaged in the storage of secondhand household goods and effects; this Commission has no jurisdiction over charges made by defendant for the storage and warehouse handling of defendant's goods.

3. This Commission has no jurisdiction over the charges for repacking materials and labor furnished at defendant's warehouse, as such charges were incurred subsequent to removal of the goods from defendant's warehouse in contemplation of a movement in interstate commerce; such movement, being interstate in character, is not subject to the jurisdiction of this Commission. (Section 5111 of the Public Utilities Code.)

O R D E R

IT IS ORDERED that defendant, Beverly Hills Transfer & Storage Company, shall make refund of \$9.75 to complainant Edwin Rand, in accordance with the preceding opinion, within thirty days after the effective date of this order. In all other respects the complaint herein is denied.

The Secretary of the Commission is directed to cause a copy of this order to be served upon each of the parties herein.

The effective date of this order shall be twenty days after service upon defendant.

Dated at Los Angeles, California, this 2nd day of MARCH, 1965.

Friedrich B. Holdreiff
President

George T. Grover

Augustine

William L. Bennett
Commissioners

Commissioner Peter E. Mitchell
present but not voting.