

ORIGINAL

Decision No. 69169

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of RUSSELL P.)
 SAMPOUL, an individual doing bus-)
 iness as COLONIAL VAN & STORAGE)
 COMPANY.)

Case No. 7758

William H. Kessler, for respondent.
B. A. Peeters, for the Commission staff.

OPINION ON REHEARING

Pursuant to order of the Commission dated November 10, 1964, rehearing was had in this proceeding before Examiner Thompson on March 26, 1965, at San Francisco, with respect to the following issues:

1. Whether Finding No. 1 of Decision No. 67022 should be modified to find Item 400, California Warehouse Tariff Bureau Tariff No. 30, applicable to the storage therein described, performed for A. J. Bayer Co.
2. In the event that Item No. 400 should be found applicable to the storage, to determine the weight and volume of the goods stored.

The basic question to be resolved on rehearing is what was the applicable rate for storage by respondent in 1962 of certain quantities of steel channels and fabricated steel forms or shapes for A. J. Bayer Co. There is disagreement among the parties concerning the rates that were applicable. The following is a summarization of the facts concerning the storage in question.

A. J. Bayer Co. fabricates, among other articles, steel frames and shapes designed to be used in the construction of bodies for trucks and other vehicles. Howard F. Bacon is the representative, or branch manager, of A. J. Bayer Co. in Fresno. He is the

only employee of Bayer at that location. His duties and responsibilities require him to maintain an inventory of steel frames and shapes at Fresno sufficient to fill orders in small lots (less than 10,000 pounds) for customers in California in the area generally between Bakersfield and Merced. Approximately 80 to 85 percent of the orders to be filled at Fresno call for shipments not exceeding 500 pounds.

The inventory maintained by Bayer at Fresno consists of 35 shapes in various sizes so that there are 65 different items therein. Inbound shipments to Fresno from Bayer's plant in Los Angeles are made by highway contract carrier. Most of the pieces are straight lengths of channels or shapes similar to channels. The longer lengths are strapped in bundles. Each bundle contains many different inventory items. Short pieces, such as sleeves and collars, are in boxes. Upon arrival at the warehouse, the bundles are broken and the items are placed in piles according to inventory number. The boxes are opened and placed in storage. The place of storage was a shed with one open side. The area utilized in the storage of the goods was 1,500 square feet. Although a box contains a number of articles of the same item, it is opened because the orders for outbound shipments never call for the full number of articles contained in the box. A bundle contains a number of articles of different items, but it is broken and the items are separated for storage for the reason that orders seldom, if ever, call for the full contents of one bundle.

In Decision No. 67022 the Commission found that the rate in Item No. 390 of the tariff was applicable to the storage in question. Respondent assessed for the storage the charges provided in Item 150 of the tariff, and respondent contends on rehearing that the rate in said latter item was applicable. The tariff publishing

officer of the bureau publishing respondent's tariff testified that in his opinion there were no rates named in the tariff for such storage. The Commission staff did not take a position at the rehearing on the rates applicable to the storage. The order granting rehearing requires a determination of whether the rates provided in Item 400 of the tariff were applicable. In Decision No. 67022 the Commission did not impose any penalties or other sanctions upon respondent. The order therein directed it to collect undercharges and to remit overcharges.

Under the circumstances, the following principles regarding interpretation or construction of tariffs are applicable here:

1. Respondent being a public utility, it is presumed that he published and filed a rate for the service provided the public in accordance with law.

2. Ambiguities in the tariff should be resolved against the utility; that is to say, where more than one rate would appear to be applicable to the service, the customer is entitled to the lower rate.

Respondent's tariff does not specify "Iron or steel channels or shapes" by name among the articles covered by specific commodity rates. Rule 5(b) of the tariff provides, "Commodities not specified herein by name will be rated as 'Merchandise', and not by analogous application." Items 390 and 400 provide rates for the storage of "merchandise, not otherwise specified." Item 390 states, "In Warehouse, loose (warehouse option), 11½ cents per square foot per month or fraction, minimum \$1.50 per month." Item 400 states that rates in Section 2 (Item 5) will apply on the storage of said merchandise "In Yard or Shed if available (Item 5). Only such merchandise as will not likely be affected by inclement weather will be

accepted in yard or shed and then only at owner's risk of loss or damage." Item 5, referred to above, sets forth rates in cents per package based upon size of the package in cubic feet or upon weight of the package, whichever produces the higher charge. (Emphasis added.) Rule A of the tariff states, "The warehouseman undertakes to store and deliver goods only in the packages in which they are originally received."

The rates in Section 2 of the tariff (and more particularly those in Items 390 and 400) are subject to the following rule:

"Except as otherwise shown, rates named herein apply to commodities stored or handled in warehouse or in warehouse shed or yard. Where reduced rates are named for storage and handling in warehouse yard or shed such rates will not apply to storage inside the warehouse even though shed or yard storage space is not provided or is not available."

It seems clear that the warehouseman was obligated under Rule A to accept and store the articles in the packages in which they were received, to wit, in bundles and in sealed boxes. The articles were "merchandise" as defined in the tariff. The merchandise was physically stored in a warehouse shed. There is evidence that such merchandise would not likely be affected by inclement weather. There is evidence that the owner accepted the risk of loss or damage to the merchandise in that shed storage was satisfactory to him and was accepted by him. The rates provided in Item 400, therefore, were applicable to the merchandise in the bundles and the boxes accepted by the warehouseman from the carrier. Such rates are subject to certain minimum charges because of other provisions in the tariff which we will consider; however, at this point it should be noted that if the articles had been stored in the shed, and subsequently

delivered, in unbroken bundles and boxes, the rates in Item 400 would have been the only rates applicable to the storage of the merchandise.

The bundles and the boxes were opened. The merchandise was sorted and repiled in the shed. The breaking and opening of the bundles and boxes were necessitated by the fact that the orders of the owner required delivery in lots other than the bundles or boxes. Rule No. 30 of the tariff provides for this circumstance and states:

"Where goods are accepted in open packages or where original packages are broken for partial delivery, storage is at owner's risk of loss or damage. The charge thereon for storage shall not be less than provided in Rule No. 150; handling will be charged on the basis of Rule No. 140."

While the bundles and boxes were broken because of the owner's requirements, repiling and sorting of the article according to size and inventory item number were accomplished for the convenience of the warehouseman in filling orders and in keeping count of the inventory. Also, respondent testified that it would have been difficult to maneuver the bundles by fork lift in the shed. How the goods are stored in the warehouse is of no concern to the owner except that the owner may wish to be assured that the warehouseman is not negligent in his duty to provide reasonably safe conditions of storage. Rule 100 provides that representatives or workmen of storers will not be allowed to have access to the warehouse to work on goods in storage. Rule No. I(e) provides that storers may, subject to insurance regulations and certain limitations, have access to their goods in storage when accompanied by a warehouse employee whose time is chargeable to the storer. Under the provisions of the tariff the repiling and sorting shall be charged to the storer at the rates prescribed for handling. No issue has been raised concerning

the correctness of any handling charges that were assessed by respondent on these goods. The testimony on rehearing is that charges for sorting and repiling were assessed. We need not inquire further into that issue.

The facts show, and we find, that the rates in Item No. 400, subject to the minimum charge provided in Rule 150, were applicable to the storage of the goods.

Respondent having assessed the charge provided for in Rule 150, we need only determine whether the charge under Item 400 exceeded the amount assessed. The rates under Item 400 are stated in cents per package (bundle or box) based upon the size of the package in cubic feet or the pounds per package, whichever produces the higher charge. The testimony shows that the bundles contained articles that were nested or partially nested. It appears that the rates based upon the weight of the package would produce the higher charge.

The evidence does not show the weight per bundle or box of the goods received by respondent; nor is there any way of determining how many bundles were involved in connection with the pieces that were in storage during the time with which we are concerned. It is not possible on the evidence in this record to determine the exact charge for the storage of the goods at the rates provided in Item 400.

This investigation, instituted on the Commission's own motion, is an enforcement proceeding. Hence, there could be no finding of a violation of the statutes without an affirmative showing supported by the weight of the evidence. We could therefore dismiss this count of alleged violation for failure of proof. The evidence, however, is reasonably sufficient to establish that respondent did assess and collect the proper charge for the storage of the goods.

Exhibit 5 shows the weight, shape and dimensions of all types of articles stored by respondent for A. J. Bayer Co. Said exhibit shows that the articles in boxes weighed between 1 pound and 19 pounds per piece; those in bundles weighed between 20 pounds and 250 pounds per piece. The evidence provides a reasonable inference that, as they were received by respondent, each bundle weighed in excess of 100 pounds and each box weighed in excess of 37 pounds. The record shows that only a small proportion of the goods was in boxes. It is therefore reasonably evident that the charge applicable under Item 400 to the entire lot could not have exceeded an amount resulting from the application of a rate of 2.7 cents per 100 pounds to the entire weight of the articles in storage.¹ To produce a charge under Item 400 of more than \$105 (which was the minimum required by Rule 150 and the amount actually assessed), the amount of goods in storage would have had to exceed 390,000 pounds. Said amount is in excess of 10 normal truckload lots. Exhibit 4 (which is a picture showing the goods in storage in the shed at the time), together with the testimony of Mr. Bacon and of respondent concerning the inventory practices of A. J. Bayer Co., clearly establishes that the goods in storage did not exceed that amount. Under the circumstances, the rate in Rule 150 was the proper rate to be applied to the storage of the goods.

We find that the charge applicable to the storage by respondent of property of A. J. Bayer Co. for the month of November 1962 was \$105.

¹ The rates per package decrease as the weight of the package increases. The rate of a package weighing 100 pounds was 2.7 cents per package, which is the equivalent of 2.7 cents per 100 pounds. The rate for a 2,000-pound bundle was 53 cents (equivalent to 2.55 cents per 100 pounds).

We further find that respondent did not assess or collect for the storage of said property an amount different from the charge named in its tariff in effect at the time.

We conclude that said Decision No. 67022 should be modified in accordance with the foregoing findings.

ORDER

IT IS ORDERED that:

1. Decision No. 67022 in this proceeding is modified by:

(a) deleting Finding No. 1 therein which reads as follows:

"1. In Part 5 the open shed does not constitute a private room and Mr. Bayer did not have exclusive use of the area. Said storage should have been rated under 'Item 390 - Merchandise, not otherwise specified,' at a rate of 11½ cents per square foot per month. The undercharge is \$67.50 rather than \$373.20."

(b) and by substituting therefor the following:

"1. In Part 5 the open shed does not constitute a private room and A. J. Bayer Co. did not have exclusive use of the area. The amount of space made available to storer was 1,500 square feet. The applicable charge for storage was \$105, which amount was assessed and collected by respondent."

2. In all other respects said Decision No. 67022 shall remain in full force and effect.

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

Dated at San Francisco, California, this 1st day of June, 1965.

Fredrich B. Haliloff President
George T. Prover
William A. Bell Commissioners