EP

ORIGINAL

Decision No. 69205

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE RICHARDSON COMPANY OF CALIFORNIA, a corporation, Complainant, vs. PACIFIC MOTOR TRUCKING COMPANY PACIFIC MOTOR TRANSPORT COMPANY, corporations, Defendants.	Case No. 8077 (Filed December 11, 1964)

C. C. Greenlee, for complainant.
John MacDonald Smith, for defendants.

O P I N I O N

By this complaint, The Richardson Company of California, a corporation, seeks reparation in the amount of $1,104.19 in connection with freight charges it has paid to defendants for the transportation of nine truckloads of battery boxes, covers, and vents from complainant's plant located at the City of Industry to destinations in Oakland and San Francisco, during the period of December 31, 1963 to and including January 31, 1964. Complainant alleges that the rates assessed were excessive or discriminatory, in violation of Article XII, Section 21 of the Constitution of the State of California; were unjust or unreasonable, in violation of Section 451 of the Public Utilities Code; and subjected complainant to unjustified prejudice or disadvantage, in violation of Section 453 of the Code, to the extent that they exceeded rates of 55½ cents and 45½ cents per 100 pounds, minimum weight 30,000 pounds and 45,000 pounds, respectively.

Defendants, in their answer, filed December 31, 1964, admit the allegations of material facts and leave to complainant its burden of proof with respect to whether the charges assessed are, in fact, unjust or unreasonable or unduly prejudicial or discriminatory.

Public hearing of the complaint was held before Examiner Gagnon at Los Angeles on February 24, 1965, at which time evidence was adduced by complainant's general transportation manager. The matter was taken under submission, subject to the receipt of late-filed Exhibit No. 3, which was received on March 3, 1965. While no evidence was offered by defendants, they support complainant's claim for reparation and request authority to satisfy the complaint.

The Pacific Motor Trucking Company operates as a highway common carrier between various points in California, including the points involved in the complaint. Pacific Motor Transport Company is an express corporation, as defined in Section 219 of the Code, and operates over the lines of the Pacific Motor Trucking Company. Defendants are also authorized to operate as radial highway common carriers as defined in Section 3516 of the Public Utilities Code.

The complaint shows that defendants assured complainant that they could and would protect the sought rail competitive rates allegedly then set forth in Item 1120 of Western Motor Tariff Bureau Tariff No. 109, Cal. P.U.C. No. 13. Assertedly, this was to be accomplished by defendant's operating under their radial highway common carrier permitted authority and the provisions of Item 200 of Minimum Rate Tariff No. 2.[1/]

1/ The alternative application of common carrier rate provisions of Item 200 of Minimum Rate Tariff No. 2 provides, in essence, that common carrier rates may be applied in lieu of the rates named in Minimum Rate Tariff No. 2 when such common carrier rates produce a lower aggregate charge for the same transportation. This tariff provision is responsive to the statutory requirements of Section 3663 of the Code which provides that: "In the event the commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points."

Defendants' common carrier rates applicable to the transportation involved herein and in effect at the time of, and subsequent to, the period during which the shipments in issue were tendered are set forth in the following table:

TABLE 1

From:	To:	Rates (In Cents Per CWT) Class	Commodity	Minimum Weight (In Pounds)
Anaheim)		(1)	(2)	
Santa Ana)	Oakland or	(--	55½	30,000
Buena Park)	San Francisco	(--	45½	45,000
Whittier)				
City of Industry	Whittier	22	-	30,000
		(3) 24	-	30,000
City of Industry	Oakland or	(--	(4) 55½	30,000
	San Francisco	(--	(5) 45½	45,000

(1) Defendants' class rates are named in Western Motor Tariff Bureau Tariff No. 111, Cal. P.U.C. No. 15, and are established on the same level as those named in Commission's Minimum Rate Tariff No. 2.

(2) Defendants' commodity rates are named in Item 1120 of Western Motor Tariff Bureau Tariff No. 109, Cal. P.U.C. No. 13.

(3) Effective January 9, 1964.

(4) Effective February 10, 1964.

(5) Effective August 12, 1964.

It will be noted from Table 1 that, while defendants had published in their common carrier tariff the sought rail competitive rates from the origin points of complainant's competitors, (Anaheim, Santa Ana and Buena Park), no such commodity rates were published from the City of Industry during the period in which the nine truckload shipments involved herein were transported. Defendants did, however, maintain higher class rates applicable from the City of Industry to Oakland or San Francisco. Such class rates are also applicable in combination with defendants' commodity rates, when lower charges result than under the application of the through class rates.

The record discloses that defendants endeavored to circumvent their noncompetitive rate status as a highway common carrier and express corporation by assuming the role of a radial highway common carrier. Thereafter, defendants assessed the sought rail competitive rates of 55½ cents and 45½ cents per 100 pounds, minimum 30,000 pounds and 45,000 pounds, respectively, under the alternative application provisions of Item 200 of Minimum Rate Tariff No. 2.[2/] This action was taken, according to the complaint, pending the amendment of Item 1120 of Western Motor Tariff Bureau Tariff No. 109, Cal. P.U.C. No. 13 so as to include the City of Industry as an origin point. Presumably defendants were then to resume their status of a highway common carrier and express corporation.[3/]

The complaint further shows that on May 1, 1964, defendants advised complainant that the California Public Utilities Commission (Transportation Division staff) had taken exception to the legality of defendants' assumption of permitted carrier status in order to assess the rail competitive rates under the provisions of Minimum Rate Tariff No. 2. Accordingly, defendants submitted to complainant the necessary undercharge bills, which were duly paid by complainant, based on defendants' applicable tariff rates in effect at the time of movement as set forth in Table 2 which follows:

2/ The record shows that Item 1177 of Southern California Freight Forwarder's Tariff No. 4, Cal. P.U.C. No. 4, contained the sought rates from City of Industry to Oakland and San Francisco.

3/ As will be seen from footnotes (4) and (5) of the aforementioned Table 1, the required tariff amendment was erroneously published so that, effective February 10, 1964, only the sought 55½ cent rate applied. The lower volume rate of 45½ cents did not become effective until August 12, 1964.

TABLE 2

Truckload Shipments of Battery Boxes, Covers and Vents
From: The Richardson Company of California
Located at the City of Industry
To: Oakland - San Francisco

From:	To:	Rates (In Cents Per CWT) Assessed		Sought	Minimum Weight (In Pounds)
City of Industry	Whittier	22	24	(Waive)	30,000
Whittier	Oakland or San Francisco	45½	45½	45½	45,000
TOTAL		67½	69½	45½	45,000
City of Industry	Whittier	24	-	(Waive)	30,000
Whittier	Oakland or San Francisco	55½	-	55½	30,000
TOTAL		79½		55½	30,000

From Tables 1 and 2 above, it will be noted that the through rates assessed complainant represented a combination of class and commodity rates constructed over Whittier, California; whereas the commodity rate factors applicable at Whittier also applied as the rail competitive commodity rates from the plants of complainant's competitors located in the same general area. Complainant requests an order directing defendants to refund, by way of reparation, the amount of undercharges ($1,104.19) collected under the aforesaid combination rate.

Discussion, Findings and Conclusion

Complainant's reparation claim is premised solely upon the fact that the combination class and commodity rates it was assessed were higher than the through alternative rail competitive rates applicable from the plants of its competitors. Application of such higher combination rates was assertedly due to a misunderstanding, on

the part of both complainant and defendants, relative to the requirements of the Public Utilities Code and the Commission's governing minimum rate orders. The record discloses, however, that complainant was fully aware that the sought level of rates was available to it via other highway common carriers in direct competition with defendants. In addition, the plant of complainant, located at the City of Industry, is directly served by common carrier rail lines, as are many of complainant's customers in Oakland and San Francisco. It is these rail carriers that publish, on their own behalf, the sought rail competitive rates in the first instance. Complainant's general transportation manager testified that ". . . for reasons of our own, we preferred to use the services of the defendants."

Standing alone, an alleged lack of knowledge of the existing statutory regulations administered by this Commission or of the outstanding minimum rate orders and decisions, does not constitute a basis for awarding reparation. Complainant has every right to prefer the service of defendants, for reasons which it need not disclose, over the like services of available competing common carriers by highway or rail. It is equally incumbent upon complainant to take advantage of the numerous facilities available to determine the applicable rate for its preferred transportation service.

With respect to the statutory violations alleged by complainant and the supporting statements of defendants, the following considerations are deemed pertinent:

1. Defendants concede that, under the provisions of Section 3516 of the Public Utilities Code, a carrier cannot lawfully operate as a highway common carrier and as a radial highway common carrier transporting the same commodities between the same points, since the two services are mutually exclusive.[4]

4/ Fortier Transp. Co., 1956, 55 Cal. P.U.C. 27.
People v. Geijsbeek, 1957, 153 C.A. 2d. 300.

2. To the extent defendants originally assessed rates for the transportation which were not specifically named in their lawfully published and filed tariff or, if named, not in effect at the time shipments were tendered for delivery, defendants were in violation of Sections 493 and 494, respectively, of the Public Utilities Code. Neither an unintentional failure to file a particular rate nor a hardship visited upon an innocent shipper through inadvertence of a carrier is sufficient reason for departure from the statutory requirements of Sections 493 and 494 or, without additional affirmative evidence, a legally sufficient basis for awarding reparation.

3. Had defendants voluntarily elected not to publish or inadvertently failed to publish in their tariff alternative rail competitive rates, such as involved herein, their otherwise applicable higher class rates would apply to the transportation involved. Such class rates, the record discloses, were established on the same level as the minimum class rates set forth in Minimum Rate Tariff No. 2.

4. To the extent defendants elected to have published in their behalf alternative rail competitive rates which were lower than the aforementioned otherwise applicable class rates, the necessary prior relief from the long- and short-haul provisions of Section 460 of the Code was obtained.[5/]

We find that complainant's evidence fails to establish a cause of action for awarding reparation under any alleged violation of Article XII, Section 21 of the Constitution or Section 460 of the Public Utilities Code; that the evidence fails to establish the alleged violation of Section 453 of the Code; and that the assailed charges (as ultimately assessed and collected, pursuant to the Commission's Transportation Division staff tariff compliance procedures) have not been shown to be unjust, unreasonable or otherwise unlawful.

5/ Cal. P.U.C. Orders Nos. STD - 2961 and 3318, dated January 21, and July 28, 1964, respectively.

Although there may be no issue as between the parties, the proof necessary to justify reparation in these circumstances is not less than that which would be required had defendants opposed the sought relief. Moreover, it is essential that the Commission carefully scrutinize the proof in support of the complaint and determine that the proof shall measure up to the relief sought, lest by awarding reparation it sanction what in substance and effect may constitute a rebate and result in unlawful discrimination.

In view of the above findings, we conclude that the complaint should be dismissed.

ORDER

IT IS ORDERED that the above-entitled complaint be, and it hereby is, dismissed.

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

Dated at San Francisco, California, this 8th day of June, 1965.

Frederick B. Holoboff, President

Commissioners