

ORIGINAL

Decision No. 74660

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 household goods carriers,)
common carriers, highway carriers,)
and city carriers, relating to the)
transportation of used household)
goods and related property.)

Case No. 5330
Petition for Modification No. 37
(Filed May 16, 1968)

O P I N I O N

California Moving and Storage Association, Inc., seeks an order clarifying or interpreting Item No. 360 of Minimum Rate Tariff No. 4-B to the effect that charges in said item shall apply when new or used shipping containers, including wardrobes, are delivered in advance of the equipment transporting the shipment. In the alternative, it requests that Item No. 360 be amended by deleting the phrase "prior to the time shipment is tendered for transportation" and substituting in lieu thereof, "in advance of the equipment transporting the shipment".

Item No. 360 now reads as follows: (Underscoring provided to indicate portion involved here)

- "1. In the event new or used shipping containers, including wardrobes, are delivered by the carrier, its agents, or employees, prior to the time the shipment is tendered for transportation, or such containers are picked up by the carrier, its agents or employees subsequent to the time delivery is accomplished, the following transportation charges shall be assessed: (See NOTE 1.)

Each container, set up	155 cents
Each bundle of containers, folded flat	155 cents
Minimum charge, per delivery	730 cents

- "2. (a) Shipping containers, including wardrobes (See NOTE 2) and packing materials which are furnished by the carrier at the request of the shipper will be charged for at not less than the actual original cost to the carrier of such materials, F.O.B. carrier's place of business.
- (b) In the event such packing materials and shipping containers are returned to any carrier, participating in the transportation thereof when loaded, an allowance may be made to the consignee or his agent of not to exceed 75 percent of the charges assessed under the provisions of paragraph 2(a).

NOTE 1. If the hourly rates named in Item No. 330 provide a lower charge than the charge in paragraph 1 of this item such lower charge shall apply.

NOTE 2. No charge will be assessed for wardrobes on shipments transported at the rates provided in Item No. 330".

On July 5, 1968, petitioner filed a memorandum of points and authorities in support of its petition in which is stated:

"[Petitioner] submits that the present rules contemplating delivery of such containers 'prior to the time the shipment is tendered for transportation,' means that the charges provided in and by the rule apply where such paraphernalia are delivered prior to the physical tender of the lading at the place of origin for over-the-road movement, and that the rule as now contained in Item No. 360 leaves no other interpretation."

"We are informed that the State Traffic Manager may have a contrary view and that, as a consequence, the Commission's Rate Section may have expressed an informal opinion agreeing with the State Traffic Manager. To our knowledge, no informal ruling has been put out in support of such a position. Be that as it may, the item must be construed and interpreted the same whether the traffic consists of civilian lading moving at Minimum Rate Tariff No. 4-B rates or whether it consists of government traffic moving at reduced rates. This Memorandum of Points and Authorities is submitted in support of our position that while we suggest a change in Item No. 360, such change does not appear necessary in light of the discussion hereinafter set forth:"

The memorandum was served by petitioner on some twenty-three persons or entities who have appeared as interested parties in Case No. 5330 at some time or another. Included among those served is Mr. E. Q. O'Sullivan, State Traffic Manager, Department of General Services, P. O. Box 1612, Sacramento, California, 95807. The Commission's Transportation Division was also furnished a copy of the memorandum.

No protest nor any correspondence concerning petitioner's Memorandum of Points and Authorities has been received by the Commission.

The views of the State Traffic Manager and the informal opinion of the Commission's Rate Section, referred to in the memorandum, are not before us.

In its memorandum petitioner has accurately set forth the history of Item No. 360 and has given authorities respecting tender of goods to carriers. Under ordinary circumstances a shipment commences when the carrier accepts possession of the goods for transportation. As stated by petitioner delivery to the carrier is not complete if anything remains to be done by the shipper before the goods can be forwarded.

We are here concerned with what appears to be a simple matter of providing a rule, or clarifying one, under which charges would be required when the carrier provides an accessorial service not included in the service for which transportation rates are applicable. It is customary for household goods movers to furnish as an accessorial service at a nominal charge, cartons and wardrobes which may be used as containers for the shipper's personal effects. In some instances the shipper may wish to "pack" the articles prior

to transportation, in which case he can pick up the containers at the carrier's place of business and there would be no delivery charge, or he can arrange to have the containers delivered to him by the carrier in which event the delivery charges in Item No. 360 would apply.

Household goods carriers ordinarily offer many services, including packing, which the shipper may or may not desire in connection with moving. Usually the shipper is not versed in transportation techniques nor does he have knowledge of what must be done to protect his personal effects from damage while in transit. The carrier's salesman or representative ordinarily discusses with the shipper the problems connected with the particular move and, if the shipper desires to avoid charge for packing, informs him what packing should be done to protect various items. It is not uncommon for the carrier to advise the shipper to leave clothes on hangers in the closet and the carrier will place the clothes in wardrobes for transportation, or to leave the shades on lamps and the carrier will provide for protection as a part of the transportation service. In some instances where it appears that there may be some "last-moment" bric-a-brac, the representative may inform the shipper that the carrier will take care of it. This latter circumstance is not uncommon in connection with local moves under hourly rates. In the circumstances described above, the carrier brings the wardrobes and containers on the equipment that is to be used for transporting the property, and the "delivery" charges in Item No. 360 were not intended for such circumstance where the containers are brought to the residence by the equipment sent out to make the move and where the containers are intended to be utilized by the carrier incidental to the transportation and are not intended to be provided to the shipper

for the purpose of packing. In such instances the containers are not delivered in that they do not come into possession of the shipper at the point of origin. The delivery of the containers to the shipper actually occurs at destination with delivery of the goods and the containers following transportation.

Under ordinary circumstances in the movement of household goods the phrase "prior to time the shipment is tendered for transportation" covers the situations where containers are not used by the carrier incidental to transportation as described above because there can be no tender, as that word is used in transportation, until the goods are presented to the carrier's possession and custody after which time the shipper has no right to alter the goods or to pack them. The time at which goods are tendered and the time at which a shipment commences depend upon the facts in any particular circumstance. We cannot accept petitioner's argument that in all cases the phrases "prior to the time the shipment is tendered for transportation", "prior to the time of shipment", and "in advance of the equipment transporting the shipment" have the same meaning in that shipment cannot take place until carrier's equipment arrives to transport the goods; however, under usual and ordinary circumstances the driver of the carrier's equipment is the agent who takes possession of the goods and therefore the shipment does not commence until after he arrives with the truck.

The phrase "prior to the time the shipment is tendered for transportation" provides for reasonable application of the charges for delivery of wardrobes and containers to the shipper. It may be that such phrase might result in uncertainty under conditions that do not fall into the category of usual or ordinary household goods

moving, but any set of facts or set of circumstances which might constitute other than usual or ordinary conditions have not been presented to us.

Petitioner's suggested phrase "in advance of the equipment transporting the shipment" does not clarify or improve the application of the charges. It is not free of loopholes. Under that proposal if a carrier desires to avoid charging for the delivery of wardrobes and cartons which the shipper would use for packing, he need only deliver the containers in the vehicle to be used for transportation and let it remain at the origin point until the shipper has finished packing and has tendered the shipment. We are unable to perceive how the proposed amendment would clarify the application of the rates in Item No. 360 or assist in the enforcement of such rates.

We find that:

1. The present rule contemplating delivery of new or used shipping containers, including wardrobes, "prior to the time the shipment is tendered for transportation" means that the charges provided in Item No. 360 apply when such paraphernalia are delivered prior to the physical tender of the lading at the place of origin for transportation.
2. The time at which a shipment is tendered for transportation is a question of fact which can be determined only upon the circumstances in a particular case. Under usual practices of household goods carriers, physical tender of the lading ordinarily occurs immediately after the equipment to be used in the transportation and the driver have arrived at the point of origin for the purpose of loading the goods; however, it cannot be said that physical tender of the goods into the custody of the carrier cannot occur at a point of time prior to the arrival of the equipment at origin.

3. It has not been shown that the substitution of the phrase "in advance of the equipment transporting the shipment" for the phrase "prior to time the shipment is tendered for transportation" in Item No. 360 will clarify the application of the minimum rates established for the delivery of containers or will assist in the enforcement of such rates.

We conclude that the petition to amend Item No. 360 should be denied, that no other order is required, and that a public hearing is not necessary.

O R D E R

IT IS ORDERED that Petition for Modification No. 37 is denied.

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

Dated at San Francisco, California, this 11th
day of SEPTEMBER, 1968.

William J. Quinn
President
Ed. J. Hill
William W. Bennett
Augusta
Paul P. Monahan
Commissioners