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Decision No. 78295

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Folger Athearn, Jr.

Complainant,

vs.

Paxton Trucking Company,

Defendant.

Case No. 9088  
(Filed July 6, 1970)

Folger Athearn, Jr., for complainant.  
Barney Bloat, for Paxton Trucking Company  
defendant.

O P I N I O N

This is a complaint for reparations and interest thereon. A duly noticed public hearing was held in this proceeding before Examiner Jarvis in San Francisco on October 7, 1970 and the matter was submitted on that date.

Complainant is a freight transportation consultant acting on behalf of his principal, in this instance, North American Equipment Corporation. The complaint deals with two shipments of equipment by North American which were transported by defendant. One shipment occurred on April 23, 1969, the other on June 8, 1967. Complainant contended that defendant charged more than its legally authorized tariff rate for transporting the shipments.

We need not concern ourselves with the details of the two shipments, because, prior to the hearing defendant paid to complainant the amount of the alleged overcharges. This was, of course, an admission that overcharges had occurred, and our review of the record supports this conclusion. Defendant, however, refused to pay

interest on the overcharges as part of the voluntary settlement on the ground that such payment was not provided for by law and that such payment might constitute an unlawful rebate. Complainant had demanded interest at the rate of 8 percent per annum as part of the settlement. He brought this matter to hearing to attempt to resolve the question of the legality of the demand. In addition, complainant seeks herein such interest at the rate indicated.

The material issues presented for determination herein are as follows: 1. May interest be demanded of and paid by a highway common carrier as part of a voluntary settlement for properly established overcharges? 2. Is complainant entitled to the award of interest herein? 3. What is the proper rate of interest to be used if complainant is entitled to the award thereof.

Section 734 of the Public Utilities Code provides in part that:

"When complaint has been made to the commission concerning any rate for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from such reparation."

Under Section 734 the Commission clearly has the power to authorize interest herein if it determines that no discrimination will result.

Extensive research has failed to disclose any case dealing with the voluntary payment of interest in connection with an overcharge adjustment. All the cases examined deal with the award of or refusal to award interest by a court or regulatory body which has the power to award and compel the payment of interest. Complainant introduced evidence which indicates that railroads, upon demand, pay interest on voluntary overcharge settlements.

In Louisiana & Arkansas Railway Co. v. Export Drum Co., 359 F. 2d 311, the Court indicated that "The Supreme Court long ago recognized the Interstate Commerce Commission's general practice of including interest from the date of payment in a reparation award on charges unlawfully exacted and upheld the propriety of such practice. See Louisville & N. R. R. v. Sloss-Sheffield Steel & Iron Co., 269 U.S. 217, 238-240, 46 S.Ct. 73, 70 L.Ed. 242 (1925)." (359 F.2d at p. 317; see also, United States v. Sonnenberg, 158 F.2d 909, 911, Atlantic Coast Line R. Co. v. Standard Oil Co., 16 F.2d 441, 445.) The reason for the rule allowing interest from the date of payment was aptly stated in Louisiana & Arkansas Railway case where the Court stated: "As the common law recognizes in analogous situations, the only way the wronged party can be made whole is to award him interest from the time he should have received the money. At the conclusion of the dispute, the parties should be in the same position regardless of whether the shipper does not pay the disputed amount, as here, and the carrier is forced to sue, or whether the shipper pays and then sues for an overcharge." (359 F.2d at p. 317; see also Louisville & N.R. Co. v. Sloss-Sheffield Steel & Iron Co., 269 U.S. 217, 239 fn. 11; West v. Holstrom, 261 Cal. App. 2d 89, 97-98.)

The Commission holds that where there is a legitimate voluntary adjustment of an overcharge by a carrier there is no legal inhibition against the payment of interest from the date the excess money was paid.<sup>1/</sup>

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<sup>1/</sup> At the present time there is no legal requirement for the voluntary payment of such interest. If there is a refusal to pay such interest, the only way to enforce the right thereto is by an appropriate proceeding, as was done herein. The Commission presently has pending before it Orders Setting Hearing 601, etc. in Case No. 5432, which deal with credit provisions in minimum rate tariffs. The parties may desire to focus upon this situation in that case or other appropriate proceeding.

Finally, complainant contends that he is entitled to interest at the rate of 8 percent per annum. Economic data was introduced in evidence to support this contention.

The Commission has traditionally applied the interest rate set forth in the California Constitution in connection with the award of reparations. (Bohan v. San Miguel Telephone Co., Dec. No. 72065 in Case No. 8548.) That rate is presently 7 percent per annum. (Cal. Constit., Art. XX, Sec. 22 (interest rates).) Complainant argues that the Commission has the power under the Constitution and statutes to establish a higher rate for reparations within constitutional limitations. This may be true. However, the Commission is not inclined to take such a significant step which would affect all utilities subject to its jurisdiction and their customers in a two-party dispute where others who would be affected had no notice and did not participate. We adhere to the practice always used by the Commission of applying the rate set forth in the constitution.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. On April 23, 1969, defendant transported, pursuant to its shipping document and bill of lading No. 39038, for complainant a back hoe. On May 8, 1969, defendant presented to complainant its freight bill No. 74070 for \$749.06 which was paid by complainant on July 15, 1969. The proper charges for said shipment were \$643.72. Complainant was overcharged \$105.34. On September 24, 1970 defendant paid complainant \$105.34.

2. The award of interest on said overcharge from July 15, 1969 to September 24, 1970 will not result in discrimination.

3. Interest at the rate of 7 percent per annum on \$105.34 for the period from July 15, 1969 to September 24, 1970 amounts to \$8.80.

4. On June 8, 1967, defendant transported a back hoe for complainant. On June 28, 1967, defendant presented to complainant its freight bill No. 48222 for \$95.40 which was paid by complainant on July 14, 1967. The proper charges for said transportation were \$71.55. Complainant was overcharged \$23.85. On July 14, 1970, defendant paid complainant \$23.85.

5. The award of interest on said overcharge from July 14, 1967 to July 14, 1970 will not result in discrimination.

6. Interest at the rate of 7 percent per annum on \$23.85 for the period from July 14, 1967 to July 14, 1970 amounts to \$5.22.

Conclusions of Law

1. Defendant should be ordered to pay complainant as reparations the sum of \$14.02 representing interest on the overcharges found herein.

2. Defendant should be ordered to pay interest on the reparations awarded herein from the effective date of this order until the amount thereof is paid.

O R D E R

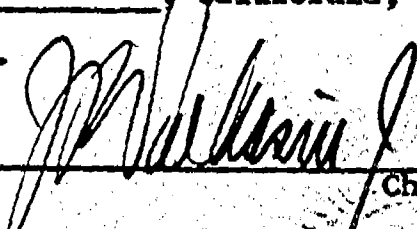
IT IS ORDERED that:


1. Defendant, Paxton Trucking Company, shall pay to complainant as reparations the sum of \$14.02.

2. Interest shall accrue on the reparations awarded herein at the rate of 7 percent per annum from the effective date of this order until the amount of the reparations is paid.

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

Dated at San Diego, California, this 9<sup>th</sup> day of FEBRUARY, 1971.

  
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Chairman

  
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Vernon L. Sturgeon

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Commissioners

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