

ORIGINAL

Decision No. 78296

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of UNION  
TERMINAL WAREHOUSE, a corporation;  
AMERICAN TOBACCO CO., a corporation;  
BROWN & WILLIAMSON TOBACCO CORP., a  
corporation; M & M MARS CANDIES, a  
corporation; PHILLIP MORRIS TOBACCO  
CO., a corporation; R. J. REYNOLDS  
TOBACCO CO., a corporation; and  
J. O. WELCH SALES CORP., a corpo-  
ration.

Case No. 8912  
(Filed May 2, 1969; Amended  
April 21, 1970)

Randolph Karr, Attorney at Law, for Union  
Terminal Warehouse; Lawler, Felix & Hall,  
by Alexis A. Fafenrodt, Attorney at Law,  
for R. J. Reynolds Tobacco Co.;  
McCutchen, Black, Verleger & Shea, by  
Bill E. Schroeder, Attorney at Law, for  
American Tobacco Co., Brown & Williamson  
Tobacco Corp. and Phillip Morris Tobacco  
Co.; and A. W. Scott, for M & M Mars  
Candies; respondents.

James Quintrall, for Los Angeles Warehouse-  
men's Association, interested party.

Elinore C. Morgan, Attorney at Law, and  
E. E. Cahoon, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the rates, operations and practices of Union Terminal Warehouse, a corporation (Union), for the purpose of determining whether said respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code in connection with for-hire transportation performed for the six respondent shippers named in the above caption, and whether Union violated Sections 453 and 532 of the Public Utilities Code in connection with public utility warehouse services performed for M & M Mars Candies.

Union operates as a for-hire carrier pursuant to radial highway common carrier and highway contract carrier permits and as a public utility warehouse under a prescriptive operative right and a certificate granted by Decision No. 51395, dated April 26, 1955, in Application No. 36759. It has places of business in Los Angeles and Vernon. It has been served with copies of all applicable minimum rate tariffs and distance tables, together with supplements and additions to each, and is a party to applicable warehouse tariffs.

Eight days of public hearing were held before Examiner Mooney in Los Angeles and San Francisco during 1969 and 1970. Testimony and exhibits were presented by the Commission staff and Union. Late-filed Exhibits 56 and 57 were received on September 10, 1970 and December 1, 1970, respectively. The matter was submitted upon the filing of the latter exhibit.

Exhibits 56 and 57 are stipulations by the Commission staff and Union. Said stipulations resolve all issues in the proceeding. In the circumstances, there is no need to recite the detailed evidence adduced at the hearing. The stipulations state as follows and the Commission finds them to be facts:

1. With respect to shipments tendered by Union, acting in its capacity as a warehouseman for the accounts of the respondent shippers, to Union, acting in its capacity as a permitted carrier, for transportation as split delivery shipments, Union did not fully comply with all of the requirements of Items 85, 170 and/or 255 of Minimum Rate Tariff 2.

2. With respect to the storage and handling of candy for the account of M & M Mars Candies during the months of April, May and June 1968, Union billed said account on the basis of the rates and charges in Item 77 of California Warehouse Tariff Bureau Warehouse Tariff No. 29-A and deducted five cents per 100 pounds from the handling rate specified therein. Item 77 does not authorize said deduction. By reason of the unauthorized deduction, the M & M account was undercharged \$622.54 during the aforementioned three-month period. Since July 1, 1968, the M & M account has been billed under other provisions of Tariff No. 29-A.

The Commission concludes that:

1. In connection with its for-hire carrier operations, Union violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine of \$2,000 pursuant to Section 3774 of said Code.

2. In connection with its public utility warehouse operations, Union violated Sections 453 and 532 of the Public Utilities Code.

The Commission expects that Union will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the amount of undercharge set forth in Finding 2. The staff of the Commission will make a subsequent field investigation into the measures taken by said respondent and the results thereof. If there is reason to believe that either said respondent or its attorney has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Union Terminal Warehouse, a corporation, shall pay a fine of \$2,000 to this Commission on or before the fortieth day after the effective date of this order.

2. Said respondent shall take such action, including legal action, as may be necessary to collect the amount of the undercharge set forth in Finding 2, and shall notify the Commission in writing upon the consummation of such collection.

3. Said respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharge, and in the event the undercharge ordered to be collected by paragraph 2 of this order, or any part of such undercharge, remains uncollected sixty days after the effective date of this order, said respondent shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the undercharge remaining to be collected, specifying the action taken to collect such undercharge and the result of such action, until such undercharge has been collected in full or until further order of the Commission.

4. Said respondent shall cease and desist from violating applicable tariff rules, rates and charges, including Items 85, 170 and 255 of Minimum Rate Tariff 2.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Union Terminal Warehouse. The effective date of this order, as to this respondent,

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shall be twenty days after completion of personal service. The Secretary is further directed to cause service by mail of this order to be made upon all other respondents. The effective date of this order, as to these respondents, shall be twenty days after completion of service by mail.

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

*[Signature]*  
Chairman  
*[Signature]*  
Vernon L. Sturgeon

Commissioners

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