

ORIGINAL

Decision No. 80854

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BURLINGAME WIRE PRODUCTS, INC.,  
Complainant,

vs.

SAMJO, INC., dba SMISER FREIGHT  
SERVICE,  
Defendant.

Case No. 9318  
(Filed January 18, 1972)

Clifford J. Van Duker, for complainant.  
Eldon M. Johnson, Attorney at Law, for  
defendant.

O P I N I O N

On January 18, 1972, complainant, Burlingame Wire Products, Inc., filed its complaint alleging that defendant charged and complainant paid for transportation of property at rates predicated on Class 200 on articles which properly should have been transported at rates based on lower classification ratings. Complainant seeks an order directing payment of the overcharges plus 6 percent interest.

A public hearing on the complaint was held on July 12, 1972 at San Francisco, at which time the matter was submitted.

Complainant manufactures and ships store display racks, magazine racks, and animal care equipment. The store display racks are manufactured from iron and steel or iron and steel combined with wood. The magazine racks are manufactured from iron and steel. The animal care equipment consists of plastic or steel pans with various kinds of tops, and adjustable steel racks on casters.

Exhibit 1 shows 38 claims for overcharges filed by complainant with defendant. Each of the 38 claims pertain to one or more shipments as follows:

<u>Number of Claims</u>	<u>Number of Shipments*</u>	<u>Commodity</u>	<u>Total Amount of Claims</u>
24	58	Magazine Racks	\$ 772.27
1	2	Store Display Racks	209.91
1	2	Animal Cages & Liners	52.02
10	21	Animal Care Equipment	608.57
2	6	Magazine Racks and Animal Care Equipment	69.19
			<u>\$1,711.90</u>

\* All shipments are l.t.l.

Complainant alleges that magazine racks are properly rated Class 110 pursuant to Item 164320 of National Motor Freight Classification A-11 (NMFC A-11). The magazine racks are shipped in cartons set up. The description on the bill of lading shows the model number followed by the words magazine racks. The overcharge claims on magazine racks cover numerous models. Pictures and literature describing one of the models, namely model DS2P, are contained in Exhibits 8, 10, and 11. No evidence was presented which described or illustrated the other magazine rack models. Exhibit 52 is a letter from the National Classification Board of the Motor Carrier Industry to the traffic manager of defendant. The letter states in part:

"Please be advised that the Board has considered these identical products recently and has held the model 17 magazine rack to be properly ratable per item 164320, which names 'Racks, newspaper or magazine display, steel or steel with plastic ends or panels.' The model 30 is more than a magazine rack, in view of the vitamin tray, and is ratable per item 164530, which names 'Store Display Racks or Stands, wire or wire and sheet steel combined.'"

Item 164320 provides a rating of Class 110 for l.t.l. shipments. Item 164530 provides a rating of Class 200 for l.t.l. shipments. Model DS2P is similar to the Model 30 described in the letter and is

properly rated Class 200 pursuant to Item 164530. Since there is no evidence describing or illustrating the other model magazine racks a determination of the proper classification cannot be made.

Complainant's rate expert testified on cross-examination that the overcharge claim for the two shipments of store display racks (Claim No. 188, Exhibit 25) was in error since the commodities shipped were set up rather than knocked down.

Defendant conceded that the overcharge claim on the shipments of animal cages and liners in the amount of \$52.02 was correct (Claim No. 287, Exhibit 47).

Complainant manufactures animal care equipment consisting of plastic or steel pans, animal cages, and adjustable steel racks on casters. Exhibit 4 is a brochure illustrating such equipment. Complainant and defendant agree that the highest rated article in the shipment determines the rating to be applied to the entire shipment. Complainant alleges that the highest rated commodity in the shipments are the animal cages which take a rating of Class 150 pursuant to Item 39520 of NMFC A-11. Defendant asserts that the adjustable steel racks on casters are properly classified Class 200 pursuant to Item 189140 Sub 3 or 164390 Sub 1 of NMFC A-11. Complainant asserts that the adjustable steel racks on casters should be classified Class 100 pursuant to Item 188560 Sub 1 of NMFC A-11.

The articles described in Item 189140 Sub 3 of NMFC A-11 are Freight Carts, Trucks, Trailers or Wagons, horse-drawn or trailer, NOI, with or without bodies or springs, wheels on or off, detachable shafts, poles, or tongues detached set up or other than completely knocked down, height of each vehicle as tendered for shipment, loose or in packages exceeding 44 inches. The articles described in Item 164390 Sub 1 are racks, NOI, set up in boxes or crates. Item 164392 provides that such racks may be shipped loose when weighing 150 pounds each. The articles described in Item 188560 Sub 1 of NMFC A-11 are Barrows, Trucks or Wagons, NOI, Hand with fixed bodies or with platforms and standing ends, sides, stakes or standards.

Item 421 of NMFC A-11 provides for classification by analogy. Of the three items advanced by the complainant and defendant, Item 164390 Sub 1 best describes the adjustable steel racks on casters.

After consideration the Commission finds that:

1. Magazine Rack, Model DS2P, is properly rated Class 200 pursuant to Item 164530 of NMFC A-11.
2. No evidence was presented describing magazine rack models other than DS2P. In the absence of such evidence a determination of the proper rating cannot be made.
3. The overcharge claim for the two shipments of store display racks (Claim No. 188, Exhibit 25) was in error since the commodities shipped were set up rather than knocked down.
4. Defendant charged \$52.02 more than it should have on the two shipments covered by Claim No. 287 (Exhibit 47).
5. The animal care equipment is properly rated Class 200 pursuant to Item 164390 Sub 1 of NMFC A-11.

Based upon the above findings the Commission concludes that:

1. Defendant should be ordered to pay complainant \$52.02 plus interest at the rate of 6 percent per annum computed from the date the freight charges were paid by complainant to the date of payment on the shipments covered in Claim No. 287 in Exhibit 47.
2. In all other respects the complaint should be denied.

#### O R D E R

IT IS ORDERED that:

1. Defendant shall pay to complainant \$52.02 plus interest at the rate of 6 percent per annum computed from the date the freight charges were paid by complainant to the date of payment of the above sum.

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2. In all other respects the complaint in Case No. 9318 is denied.

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

Dated at San Francisco, California, this 19th  
day of DECEMBER, 1972.

Vernon L. Stinger  
President  
William J. Quinn  
John J. Quinn  
John J. Quinn  
John J. Quinn  
Commissioners