

TEODORO R. YANGCO, PETITIONER, VS. THE PUBLIC UTILITY COMMISSION AND MARIANO CUI, JOSE A. SANTOS AND E. J. WESTERHOUSE, AS MEMBERS OF THE BOARD CREATED BY SECTION 19 OF ACT NO. ...

G.R. No. 14051. January 13, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

The important question presented by this appeal is, whether or not a common carrier has a right to establish different freight rates for different shippers, based upon different and additional services rendered.

The petitioner herein, sometimes before the commencement of the present action, promulgated a new schedule of freight and passenger rates, with the following proviso:

"Provided that, upon all shipments of merchandise by the Government of the Philippine Islands, and by any province or municipality thereof, and by any branch, department, division, bureau, office or representative of the same, and also upon all shipments of merchandise by any person, individual or entity which requires its shipments to be made under like condition, there shall be a surcharge of 20 per cent upon the rates above specified."

Said new schedule, with said proviso, was submitted to the Public Utility Commissioner in accordance with law, for approval. The Director of Public Works, the Insular Purchasing Agent, and the Insular Auditor entered written protests against the proposed surcharge of 20 per cent above referred to. The present appeal relates only to the said surcharge of 20 per cent.

The petitioner, during the hearing before the Public Utility Commissioner, presented proof showing that, by reason of the conditions and requirements of the persons named in said proviso, the cost of the shipments of merchandise was greatly enhanced over the shipments made by other persons, and that the 20 per cent surcharge was only added for the purpose of covering the additional expense incurred by said requirements and conditions. The protestants presented no proof before the Public Utility Commissioner refuting or attempting to refute said proof presented by the petitioner.

The Public Utility Commissioner, after hearing the petitioner and the protestants, in a very carefully prepared and elucidate opinion, approved the new schedule of freights, including the said proviso, upon the theory that, for additional services required by shippers, a common carrier is justified in charging an additional freight rate. (See decision of Pub. Utility Commissioner, Hon. Mariano Cui, 16 Off. Gaz., 20.)

The Insular Purchasing agent moved for a rehearing of said petition, which was granted in accordance with section 19 of Act No. 2694. The rehearing was heard before the Board of Commissioners composed of Commissioner Cui; Mr. Westerhouse, Director of Public Works; and Mr. Jose A. Santos, one of the assistants in the office of the Attorney-General. While some objection was presented to the composition of the board inasmuch

as it was composed of one of the protestants before the Public Utility Commissioner as well as by an attorney for said protestants, yet nevertheless, for the purposes of the present decision, we deem it unnecessary to discuss that question.

The board, composed as above indicated, upon a reconsideration of the evidence adduced before the Public Utility Commissioner and after a consideration of said evidence and the law, revoked the order of the Public Utility Commissioner and refused to approve the schedule of freight proposed by the petitioner together with said proviso. (See decision of said Board, 16 Off. Gaz., 932.) The record was brought to this court for review, and the only important question presented is that indicated in the first paragraph above.

The Public Utility Commissioner is authorized, under the law, to authorize and approve reasonable freight rates for common carriers. Naturally, in reaching a conclusion as to what is a reasonable freight rate for carrying merchandise, it is the duty of the Commissioner to inquire into the cost of transportation of merchandise. Different freight rates for different kinds and classes of merchandise, of course, must be fixed, for the reason that it does not cost as much to transport some freight as it does others. And, moreover, if one shipper requires additional services of the common carrier for the transportation of his freight, over other persons, he must reasonably expect to pay an additional rate.

The petitioner asserted and proved that, to transport the merchandise of the persons mentioned in said proviso required additional services and additional expense, and that the 20 per cent surcharge was no more than was necessary to cover said additional expense. In view of that fact, the law justifies, and the Public Utility Commissioner was authorized to approve, a reasonable additional freight charge for the additional services required by the persons named in said proviso.

Without a further discussion of the various questions presented by the petitioner, we are of the opinion and so decide that the findings of fact and conclusions of law made by the Public Utility Commissioner were fully authorized by the record and the law. (16 Off. Gaz., 20.) Therefore, the order of the Board refusing to approve the new schedule of freight rates, including the proviso, is hereby annulled and revoked and the order promulgated by the Public Utility Commissioner approving said schedule of freight rates including said proviso is hereby affirmed; and, without any finding as to costs, it is so ordered.

Arellano, C. J., Torres, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

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