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RAILROAD COMPANY—PUBLIC UTILITIES COMMISSION OF OHIO—HAS AUTHORITY TO AUTHORIZE COMPANY TO REFUND OR WAIVE COLLECTION OF PORTION OF RATE—RAILROAD'S SCHEDULE OF RATES—TRANSPORTING PROPERTY—RATE SPECIFIED BY SCHEDULE FOUND BY COMMISSION TO BE EXCESSIVE AND UNREASONABLE—NEW SCHEDULE OF RATES—LOWER RATE—FILED WITH COMMISSION.

SYLLABUS:

The Public Utilities Commission of Ohio has authority to authorize a railroad company to refund, or to waive collection of, as to all shippers served under substantially similar conditions, a portion of the rate set forth in the railroad's schedule of rates for transporting property when the rate specified by the schedule has been found by the Commission to be excessive and unreasonable, and a new schedule of rates, setting forth a lower rate for the shipment in question, has theretofore been filed with the Commission.

Columbus, Ohio, February 3, 1956

Public Utilities Commission, State of Ohio  
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“The Public Utilities Commission of Ohio respectfully requests your opinion on the following question:

“Does The Public Utilities Commission of Ohio have authority to authorize a railroad company to transport property at a rate less than that specified in its printed schedules and tariffs in full force and effect at the time of a shipment by (a) authorizing the railroad company to refund a portion of the compensation collected by it, or (b) authorizing the railroad company to waive the collection of the published schedule or tariff rates in effect at the time of the shipment in lieu of a lesser schedule or tariff rate put in effect subsequent to the date of the shipment?

“The facts and circumstances which give rise to this situation are as follows:

“A railroad company has on file with The Public Utilities Commission of Ohio printed schedules and tariffs covering the rates to be charged for shipping commodity No. 53 from point ‘A’ to point ‘B’ at 75 cents per unit.

“A shipper ships commodity No. 53 from point ‘A’ to point ‘B’ by rail. Subsequently the railroad company amends its tariffs so as to reduce the rate from 75 cents per unit from point ‘A’ to point ‘B’ and the new tariff reflecting the 50 cent rate becomes effective after the shipper has begun shipping commodity No. 53.

“The shipper is desirous of having the reduced rate of 50 cents per unit apply to his shipments before the railroad’s schedules and tariffs reflecting the reduced rates became effective. The railroad seeks to allow the shipper to utilize the reduced rates in one of three manners:

“First—the railroad bills the shipper 75 cents per unit until the new tariff is in effect and the shipper pays the 75 cents per unit until the new tariffs become effective. The railroad then files a joint pleading with the shipper asking the Commission for authority to refund what the railroads call ‘an overcharge’ of 25 cents per unit and the railroad in this pleading

admits that the rate lawfully applicable at the time and over the route shipment was moved was, under all the circumstances and conditions then existing, excessive and unreasonable. This is called a request for authority to refund the collection of overcharges.

“Second—The railroad company bills the shipper 75 cents per unit until the new tariffs go into effect reflecting the 50 cent per unit cost. The shipper, however, only pays 50 cents per unit and thus the railroad company has on its books a bill due from the shipper at 25 cents per unit in its Accounts Receivable. The railroad company and the shipper then files with this Commission a joint pleading requesting authority from the Commission to waive the collection of overcharges and the railroad in this pleading admits that the rate lawfully applicable at the time and over the route shipment was moved was, under all the circumstances and conditions then existing, excessive and unreasonable. This is called a request for authority to waive the collection of an overcharge.

“Third—The railroad company, notwithstanding the fact that the tariff in effect at the time of the shipments made showed a 75 cent per unit charged, bills the shipper 50 cents per unit. When the new tariff becomes effective reflecting the 50 cent per unit charge, the railroad company and the shipper file a joint pleading with the Commission to waive the collection of undercharges and the railroad in this pleading admits that the rate lawfully applicable at the time and over the route shipment was moved was, under all circumstances and conditions then existing, excessive and unreasonable. This is called a request for authority to waive the collection of undercharges.

“In all of these cases shipments of commodity No. 53 are made both before and after the effective date of the tariff reducing the rates from 75 cents per unit to 50 cents per unit. The amount of money involved in the joint pleadings deal only with those shipments of commodity No. 53 prior to the effective date of the tariff reflecting the 50 cent per unit charge.

“The Commission is desirous of properly exercising only the powers delegated to it, and in view of Revised Code Sections 4907.28, 4907.38 and others, seeks your opinion on the above propounded question for its guidance.”

Section 4907.57, Revised Code, sets forth the jurisdiction of the Public Utilities Commission over claims against railroads. The first paragraph of this section reads as follows :

“All claims, charges, or demands against a railroad for loss of or damage to property occurring while in the custody of

such railroad and unreasonable delay in transportation and delivery, for overcharges upon a shipment, or for any other service in violation of Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4925. of the Revised Code, if not paid within sixty days from the date of the filing thereof with such railroad, may be submitted to the public utilities commission by a formal complaint. Such complaint shall be made upon blank forms which the commission shall provide upon demand of the claimant."

This section gives the Commission jurisdiction over claims for overcharges upon a shipment. In the case of *The Taylor-Williams Coal Company v. Public Utilities Commission*, 97 Ohio St., 224, 230, it was said that the term overcharge means a charge collected above the lawful tariff rate—a charge of more than is permitted by law. In a later case, *The Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. v. Mills Brothers*, 101 Ohio St., 173, the Supreme Court held that where a railroad company charges a rate that is in excess of a lawful rate it is an overcharge, and the protection of the published tariff schedule does not operate as a cloak of validity where such schedule is in direct violation of positive law.

Section 4907.28, Revised Code, referred to in your request, reads as follows:

"No railroad shall charge, demand, collect, or receive a greater or less compensation for the transportation of passengers or property, or for any service in connection therewith, than is specified in the printed schedules referred to in sections 4907.25 to 4907.27, inclusive, of the Revised Code, including schedules of joint rates, as being then in force. The rates, fares, and charges named in such schedules shall be the lawful rates, fares, and charges until they are changed as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4925. of the Revised Code."

Section 4907.38, Revised Code, reads as follows:

"No person, firm, or corporation, shall knowingly accept or receive a rebate, concession, or discrimination in respect to transportation of property wholly within this state or for service in connection therewith, whereby such property, by false billing, false classification, false weighing, or other device is transported at a less rate than that named in the published tariffs in force, or whereby any service or advantage is received other than that specified in such tariffs."

Sections 4907.35 and 4907.37, Revised Code, prohibit a railroad from unjustly discriminating against a shipper or from giving a shipper an undue

or unreasonable advantage. These sections are similar to Sections 4907.28 and 4907.38, *supra*.

Another section which must be considered in answering the question presented by your request is Section 4907.24, Revised Code, which reads as follows:

“Each railroad shall furnish reasonably adequate service and facilities. The charges made for any service rendered or to be rendered in the transportation of passengers or property, for any service in connection therewith, or for the receiving, switching, delivering, storing, or handling of such property, shall be reasonable and just. Every unjust and unreasonable charge for such service is prohibited.”

In the situation described in your request there are two dominant facts. First, the railroad seeks authorization to charge less for a shipment than the rate specified by the tariff at the time the shipment was made. Second, it is agreed by the railroad and the shipper that the rate specified in the tariff for the shipment in question was excessive and unreasonable.

Sections 4907.28 and 4907.24, *supra*, when applied to these facts, appear to be in conflict. The former section prohibits a railroad from charging a greater or less compensation than that specified in the scheduled rates then in force. The latter section prohibits a railroad from making an unjust or unreasonable charge. Thus, the basic question is whether the Public Utilities Commission may authorize a railroad to charge less than the rate specified in its published schedule of rates when the specified rate is admittedly unreasonable and excessive.

The statutes set forth or referred to above which contain provisions relative to the rates to be charged by the railroads are in *pari materia* and should be considered together so that they will receive harmonious construction. See *The Pittsburgh and Lake Erie Rd. Co. v. Public Utilities Commission*, 128 Ohio St., 388; *Warner v. The Baltimore & Ohio Railroad Co.*, 11 O.N.P. (N.S.), 487.

In the Warner case, decided in 1911, there is a discussion of certain sections of the General Code that dealt with railroads, embraced within Sections 487 to 614 of the General Code. These sections were enacted by the 77th General Assembly, 98 Ohio Laws, 342-358, and became effective in 1906. The title of that Act reads as follows:

“To regulate railroads and other common carriers in this state, create a board of railroad commissioners, prevent the imposition of unreasonable rates, prevent unjust discriminations, and insure an adequate railway service.”

Speaking of these sections, it was said, in the Warner case, 11 O.N.P. (N.S.), 487 at page 488:

“Manifestly the purpose of the statute is to prevent unjust discrimination in the carriage of passengers and property, and it seeks to do this by the establishment and enforcement of just and uniform charges for service rendered by railway companies as common carriers.”

Later in the opinion, at page 489, it is said:

“This statute is both administrative and remedial. It embodies a well-defined scheme, and must be taken in its entirety. Sections 504 and 567 show what the statute is aimed at—the wrongs to be repressed, and the duties to be enforced. \* \* \*

“While the sections of this statute are in disorderly arrangement, it must be clear, that Sections 504, 567, 510 and 569, taken together, as they must be, show that 504 and 567 are to be operative only as a part of the whole legislative scheme—they can not be segregated, either in the interpretation of the act, or in its application.”

Sections 504, 567, 510 and 569 of the General Code, referred to in the above quotation are now Sections 4907.24, 4907.37, 4907.28 and 4907.62, respectively, of the Revised Code. It would seem that the purpose of these sections of the Code remains unchanged. Taken in their entirety they seek to prevent unjust discrimination in the carriage of property by the establishment of just and uniform charges for the services rendered.

As a part of this plan the railroads are required to print schedules showing the rates, fares, and charges for transportation of passengers and property. Section 4907.25, Revised Code. The schedules are to be filed with the Public Utilities Commission and must be open for public inspection at every depot, station, or office of such railroad. The main purpose of Section 4907.28, *supra*, prohibiting a railroad from charging a greater or less rate than that specified in the printed schedules is to prevent the railroad from unjustly discriminating against certain shippers. If the railroad must charge the amount specified in its printed schedule, which is open to public inspection, then it must charge every shipper the same amount for the same service.

Equally important in the over-all plan for the regulation of railroads is the prohibition against every unjust and unreasonable charge for the services rendered in the transportation of property, set forth in Section 4907.24, *supra*. The force of this provision is such that a violation of it, i.e., an unjust or unreasonable charge for a transportation service, would be a direct violation of positive law. Thus, in accordance with the holding in the case of *The Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. v. Mills Brothers*, *supra*, such a charge would be an overcharge and the protection of the published tariff would not operate as a cloak of validity. This proposition is further supported by the case of *Erie Railroad Co. v. Steinberg*, 94 Ohio St., 189. In that case, referring to the schedule of rates filed by a railroad, the sixth paragraph of the syllabus reads as follows:

“Where a copy of such schedule is printed and filed as provided by Sections 505 and 506, General Code, shippers and travelers are charged with notice of the tariffs named in this schedule and must abide thereby, unless the same be found unreasonable by the public utilities commission of the state.”

Thus, if the Commission finds that the rate specified in the tariff was unreasonable and excessive, it would have authority to authorize a railroad company to refund the excessive portion of the compensation collected by it. I do not mean to suggest, however, that merely because the parties, the shipper and the railroad, concede that a particular rate is unreasonable and excessive, the Commission may not use its discretion in making such findings. The Commission, in the exercise of authority in this regard, should, therefore, proceed carefully to prevent the railroads from discriminating among its shippers by granting a preference to certain shippers.

The foregoing gives a harmonious construction to Section 4907.24, *supra*, and Section 4907.28, *supra*, and similar sections. It does not violate the cardinal principles of uniformity and reasonableness in the regulation of railroad rates.

Moreover, it may be noted that this construction is in accord with the manner in which the Commission has administered these sections in the past. For more than forty years the Commission has issued railroad reparation claim orders. In the Annual Report of the Public Service Commission of Ohio for the year 1912, at page 329, there is set forth an order of the Commission in the case of *Hageman v. The Cleveland, Akron*

& Cincinnati Railway Company. In that proceeding the Commission ordered the defendant railroad to refund to the complainant an amount which represented the difference between the charge collected by the railroad, which charge the railroad admitted was excessive and unreasonable, and the charge thereafter established by the filing of a tariff supplement.

The form prescribed by the Commission, in accordance with the provisions of Section 4907.57, *supra*, for use in requesting authority to make refunds requires a full disclosure of all the pertinent facts about the shipment or shipments for which authorization to make refunds is sought. This is the joint pleading referred to in your request, which is filed by the railroad and the shipper. The following statement is set forth in this pleading:

“It is agreed that the order of the Commission authorizing refund herein may require that published tariff rates and rules upon which adjustment is based shall be maintained (as maxima) for a period of one year from the date this application is filed.”

I also note that all Reparation orders issued by the Commission contain substantially the following provision:

“That the defendant company or companies inspect the billing applicable from (the point of origin) and refund to the consignee or consignor of all other shipments of (the commodity in question) transported over its line from (the point of origin to the point of destination in question) on the same dates all charges assessed and collected in excess of those that would accrue on the basis of the rate on which we authorized the reparation.”

These provisions would seem to be designed to prevent reparation proceedings from becoming vehicles of unlawful discrimination. A schedule setting forth the new rates is filed with the Commission before the application for authority to make the refund is filed. The new rates are to be maintained for at least a one-year period. Thus, all future shipments for all shippers will be charged for in accordance with the new rates. Refunds must also be made to any other shippers who made similar shipments between the same two points during the period of time the shipments for which authority to make a refund is sought were made. These safeguards would appear to prevent a railroad from giving one shipper a preference over others.



In your request it is said that permission is sought to make the refund in one of three ways: (1) request for authority to refund the collection of overcharges; (2) request for authority to waive the collection of an overcharge; (3) request for authority to waive the collection of undercharges. The differences between these three types of request arise from the manner in which the original billing is made. In my opinion these differences do not change the actual character of the transaction. If the application sets forth sufficient facts to entitle the applicants to relief, the manner in which the account was opened on the railroad's books does not alter that fact. Given a proper case, the order of the Commission should grant the type of relief necessary to make the reduction in rates effective.

Specifically answering your question, it is my opinion that the Public Utilities Commission of Ohio has authority to authorize a railroad company to refund, or to waive collection of, as to all shippers served under substantially similar conditions, a portion of the rate set forth in the railroad's schedule of rates for transporting property when the rate specified by the schedule has been found by the Commission to be excessive and unreasonable, and a new schedule of rates, setting forth a lower rate for the shipment in question, has theretofore been filed with the Commission.

Respectfully,

C. WILLIAM O'NEILL

Attorney General