

Railroad Commissioners, Special Rates to Concentrations Points. Wool, Rates for Shipment to Concentration Points. Insurance, As Part of Special Rate for Shipment Over Railroad.

Where a railroad company makes a special rate for the shipment of goods to concentration points and incorporates, as a part of the special rate, a provision for the insurance of such goods by the railroad while held at such point, it is a reasonable regulation and the shipper is not entitled to the special rate without complying with the insurance provision.

Helena, Montana, July 1, 1909.

The Board of Railroad Commissioners,

Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 25th ult., in which you request an opinion upon the following proposition:

"The Riverside Land & Livestock Company of Helena, bring up the question of shipping wool to concentrating points without placing insurance thereon as provided in Northern Pacific tariff. For your information we quote from said tariff as follows:

(Here follows a quotation from the tariff of the Northern Pacific Railway Company governing the shipment of wool to concentration points and the insurance and storage of wool held at such points.)

You will note that in consideration of special rates named, the wool is insured, the cost of such insurance being charged against the shipper, the railroad company furnishing free of charge storage at concentrating points."

We have been unable to find any decision of the courts bearing directly upon this question. However, it appears from the quotation from the Northern Pacific tariff contained in your letter that the company makes a special rate on wool to concentrating points and publishes, as a part of such rate a regulation to the effect that the company will hold such wool in storage for ninety days free of charge, upon the condition, however, that the company will insure this wool at its full value and the cost of such insurance will be charged against the wool. In our opinion a shipper of wool over the Northern Pacific to one of its concentration points must comply with all the provisions of the tariff relating to such shipments in order to secure the benefit of the special rates therein given. If a shipper of wool does not wish to ship his wool under these concentration point rates, he, of course, could ship it under the

general tariff rates whereby he would pay local rates from the point of origin to the concentration point and then he could store his wool in any public warehouse, or, if he had held it in the cars or warehouse of the railway company, it would be subject to demurrage or storage charges under the rules of the railroad, and when he moved the freight on from the concentration point, he would then have to pay the regular local tariff from that point to destination. Thus the shipper would have his option of two tariff schedules, and if he desires to receive the special rate in the schedule fixed for shipping wool to concentration points, he must comply with all the regulations published in such tariff, provided such regulations are reasonable.

Elliott on Railroads, 2d Ed., Secs. 1566-67.

A similar question was before the Inter-state Commerce Commission in the case of Charles England and Company v. Baltimore and Ohio Railroad Company, decided June 2nd, 1908. In this case there was a question of fact as to whether the shipper delivered the goods to the carrier for immediate transportation or for the purpose of holding subject to further orders, the carrier contending that they were received for storage until further orders from the shipper, and therefore they insured the shipment and charged it against the goods. The commission found that the goods were delivered to the carrier for immediate shipment, and therefore held that the carrier had not authority to charge the insurance. But nowhere in such opinion, or in the contention of counsel for the shipper was the authority or right of the carrier to insure the goods and collect the insurance questioned in cases where the goods were stored subject to further orders from the shipper. See also the case of Wyman, Partridge and Company v. Boston & Main Railroad, 15 Inter-State Commerce Commission Reports, 577.

Therefore, in our opinion, the insurance charges made by the railroad company on wool shipped under the rate published for shipments to concentration points is a reasonable and valid regulation, and the shipper is not entitled to the transportation rate without also complying with the insurance regulation.

Very truly yours,

ALBERT J. GALEN,

Attorney General.