

Decision No. 24933.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA INTERURBAN MOTOR
TRANSPORTATION ASSOCIATION,
an association,
Complainant,

vs.

T. R. REK, doing business under
the fictitious name and style of
REK TRANSFER INTERURBAN EXPRESS
AND FREIGHT LINE,
Defendant.

ORIGINAL

Case No. 3207.

John M. Atkinson and Wallace K. Downey, by
Wallace K. Downey, for complainant.

Phil Jacobson, for defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding complainant alleges that defendant has failed to adhere to its tariff lawfully on file with this Commission in assessing and collecting rates for the transportation of property between Los Angeles and contiguous territory on the one hand and San Bernardino, Redlands, Yucaipa, Colton, Rialto, Fontana and points intermediate thereto on the other hand. An order requiring defendant to cease and desist from the alleged violation is sought.

Public hearings were held before Examiner Kennedy at San Bernardino April 14 and at Los Angeles May 13, 1932, and the matter submitted on briefs.

Defendant is engaged in the transportation of property

by auto truck over the public highways between the points named above, under authority granted by this Commission in Applications 4803, 9846 and 14176, Decisions 6902, 13574 and 19229 of December 5, 1919, May 17, 1924 and January 10, 1928 respectively. The rates lawfully applicable for this service are contained in defendant's Local Freight Tariff C.R.C. No. 8 and supplements thereto.

Complainant in support of its allegations subpoenaed five witnesses, all of whom were shippers via defendant's line. The records of these shippers show that in the main defendant adhered to its tariff. However there were two instances where defendant failed to properly apply its tariff due to apparent clerical errors and two instances where the tariff was deviated from knowingly. The last two violations were as follows:

1. Between June and October 1931 bills rendered in accordance with the lawfully applicable tariffs were changed by a consignee and paid on a reduced basis. This fact was known to defendant and had its approval.

2. Defendant customarily picked up and delivered shipments of less than 2,000 lbs. at Los Angeles without extra charge, notwithstanding Rule 1 of defendant's Tariff C.R.C. No. 8, which reads:

"APPLICATION OF RATES: (a) Rates published herein cover store-door pick-up and delivery within the city limits of all points served except at Los Angeles, where said rates apply within the following defined zone: On shipments of less than one ton: From or to this company's terminal depot."

Defendant does not deny that its tariff has been violated in the foregoing respects. It attempts to justify the deviation first mentioned on the ground of competition of another carrier. Likewise defendant claims that the practice of picking up shipments at the shipper's door was made necessary by competition.

Defendant has now supplemented its tariff by lawfully reducing its rates and providing for the picking up and delivery at Los Angeles of shipments weighing less than one ton. It furthermore expressed its intention of collecting the difference between the rates charged and those lawfully in effect.

After consideration of all the facts of record we find that in the two instances specifically mentioned above defendant deviated from its tariff. However there has been no widespread attempt on its part to disregard its tariff. Defendant is more guilty of negligence than of a willful and deliberate attempt to violate the law. Under the circumstances we are of the opinion that the exaction of penalties provided in the Auto Stage and Truck Transportation Act (Statutes 1917, Ch. 213 as amended) should not in this instance be resorted to. However defendant as well as shippers who obtain an unlawful rate, are placed on notice that future deviations from the lawfully filed tariffs will call for drastic action.

Defendant will be required to collect all outstanding undercharges. The undercharges for the pickup and delivery at Los Angeles of shipments weighing less than 2000 lbs. will be the amount of the local drayage rate from or to defendant's terminal at Los Angeles.

O R D E R

This case having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that defendant T. R. Rex, doing

business under the fictitious name and style of Rex Transfer Interurban Express and Freight Line, immediately cease and desist from assessing, demanding or collecting rates less or greater or different from those shown in its tariff lawfully on file with this Commission.

IT IS HEREBY FURTHER ORDERED that defendant T. R. Rex, doing business under the fictitious name and style of Rex Transfer Interurban Express and Freight Line, forthwith issue balance due bills for the amounts of the undercharges found to exist in the opinion which precedes this order and notify the Commission immediately upon the collection thereof.

Dated at San Francisco, California, this 27th day
of June, 1932.

Al Seney
Leon Ashby
W. H. ...
W. B. ...
Fred G. ...
Commissioners.