

Decision No. 33065

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation,)
on the Commission's own motion, into)
the highway carrier operations, rates,)
charges, contracts, and practices of)
DIAMOND FREIGHT LINES, INC., a)
corporation.)

ORIGINAL

Case No. 4368

EDWARD M. BEROL and THOMAS J. BUCKLEY,
for Respondent,

FRANK LOUGERAN for Legal Division,
Transportation Dept.

BY THE COMMISSION:

O P I N I O N

Respondent is a highway contract carrier. The purpose of this investigation is to determine whether certain specified shipments were carried by respondent at rates less than the applicable minimum rates established by Commission Decision No. 30370, as amended, and, if so, whether respondent should be required to cease charging less than minimum rates and to collect undercharges, and whether respondent's permit should be cancelled, revoked, or suspended for such violations.

An exhibit attached to the order of investigation lists 16 specific movements of property in connection with which the violations are alleged to have occurred. At the hearing six of the specified movements were eliminated from the scope of the investiga-

tion and no proof was made as to these items.

The evidence and arguments of counsel principally concern eight of the movements listed in the order of investigation.⁽¹⁾ These are all of similar character. Each involves the transportation of fibreboard boxes, folded flat, weighing between 4800 and 18,000 pounds, from Oakland to Modesto, for either the Tri-Valley Packing Company or the Pacific Grape Products Company. The lot of goods involved in each of said movements was accompanied by a separate bill of lading which was the only shipping document issued.

The minimum rates applicable to this traffic are those for distances of 108.5 miles, that being the constructive mileage between Oakland and Modesto.⁽²⁾ Under Decision No. 30370, as amended, the shipments are subject to the third class rates⁽³⁾ for the distance stated for the respective weight brackets, to-wit, 37 cents per 100 pounds, minimum weight 4,000 pounds; 27 cents per 100 pounds, minimum weight 10,000 pounds; and 25 cents per 100 pounds, minimum weight 18,000 pounds;⁽⁴⁾ except that, pursuant to Rule 40(d), where the charge computed at the rate applicable to a minimum weight greater than the actual weight is lower than the charge based on the actual weight of the shipment, the lower charge applies as minimum; and except further, pursuant to Rule 40(e), that if there

(1) Items 3, 4, 5, 7, 8, 9, 10, and 15 of Exhibit "A" to Order Instituting Investigation.

(2) Rule 40(c), subparagraphs 1 and 2, Rule 45(o), Appendix "A" to Decision No. 30370, as amended by Decision No. 30668; and Rule 40(c), subparagraph (4), Appendix "A" to Decision No. 30770, as amended by Decision No. 30378 in Case 4088, Parts U and V.

(3) Western Classification, Page 89, Items Nos. 7, 31, and 34.

(4) Section 3, Appendix "A", Decision No. 30370.

is a lower common carrier rate for the same transportation, that rate shall apply as minimum. Three of the shipments, those occurring on April 5th and 22nd and May 26th, 1938, weighing over 11,250 pounds, were subject to the common carrier carload commodity rate of nine cents per 100 pounds⁽⁵⁾ or ten cents per 100 pounds,⁽⁶⁾ both rates subject to a minimum weight of 30,000 pounds. The others were subject to the 27 or 37 cent rate, according to their respective weights. Respondent charged in some cases nine and in some cases ten cents per 100 pounds applied to the actual weights of the respective shipments.

Both in the record and in its brief, respondent admitted that the minimum rates properly applicable to the various shipments were those just stated, and that the rates actually charged were in violation of that decision, as amended. Applicant's traffic manager stated he had not attempted to rate these movements as separate shipments but as partial lots of larger shipments weighing not less than 30,000 pounds, and therefore he had applied the lower rates applicable to 30,000 pound shipments. The shippers for whom the service was performed, he said, were in the habit of ordering these commodities from those from whom they purchased them in 30,000 pound lots. Believing that if the shippers had ordered their commodities in lots of 30,000 pounds or more, the entire lot should be considered

(5) Item No. 7120; Column "A" rates Indices 7 and 500 Item No. 7130 A.T. & S. Fe Ry. Tariff No. 12375-0, C.R.C. No. 690. Item No. 6912-D; Column "2" rates Indices 10 and 3485 Item No. 6914-M Southern Pacific Company Freight Tariff No. 730-D, C.R.C. No. 3353. Item No. 17410; Column "A" rates Item No. 17460 Pacific Freight Tariff Bureau Tariff No. 34-0, C.R.C. No. 556 (L. F. Potter series).

(6) Item No. 7120; Column "A" rates Indices 7 and 500 Item No. 7130 and Supplement No. 15 to A.T. & S Fe Ry. Tariff No. 12375-0, C.R.C. No. 690. Item No. 6912-D; Column "2" rates Indices 10 and 3485 Item No. 6914-M and Supplement No. 47 Southern Pacific Company Freight Tariff No. 730-D, C.R.C. No. 3353. Item No. 17410; Column "A" rates Item No. 17460 and Item No. 4 Supplement No. 140, Pacific Freight Tariff Bureau Tariff No. 34-0, C.R.C. No. 556 (L. F. Potter series). Tariff of Increased Rates and Charges X-123 C.R.C. No. 7 of J. P. Haynes, Agent.

as a single shipment, he therefore applied the rate applicable to a shipment of that weight.

Under Rule (40(a) of Decision No. 30370, as amended, the rates specified therein are applicable "for the transportation of 'shipments' as defined in Rule 10(g)." Rule 10(g) defines a shipment as follows:

"SHIPMENT means a quantity of freight received from one shipper on one shipping order or one bill of lading at one point of origin at one time for one consignee at one destination."

Each of the less-than-30,000 pound lots referred to moved under a separate shipping order or bill of lading, and all but two were received on different days. Under these circumstances, it would appear that even a casual consideration of the characteristics of the traffic, in the light of the definition of the term "shipment," should readily have made it plain that each movement constituted a separate shipment which, under the order, was required to be rated according to its individual characteristics.

Respondent's traffic manager was unable to point out anything in the language of Rule 10(g) which might have confused him. Mr. V. F. Ramos, president of respondent corporation, however, suggested the deviations arose through the inexperience of the traffic manager who had only recently been assigned to such duties, and whose previous experience in transportation had been limited to dispatching trucks. It does not appear, however, that these violations can plausibly be attributed to mere inexperience. The language of Rule 10(g) is simple and unequivocal and the facts were plain. A simple reading of the rule should have been proof against the error made. The facts suggest rather that the violations occurred through failure to make a reasonable effort to apply the rates established by the order.

Respondent should be directed to collect resulting undercharges and to cease and desist from further violations. An appropriate penalty should also be imposed. It appears to us, however, that suspension of respondent's operating permits would permanently impair respondent's business and result in undue hardship. The attorney for the Commission will therefore be directed to institute proceedings for the imposition of penalties under other provisions of the Act.

WE HEREBY FIND:

(1) That respondent charged and collected compensation in full at the rate of nine cents per 100 pounds for the transportation, as a highway contract carrier, on April 5, 1938, of a shipment consisting of 356 bundles of fibreboard boxes corrugated, folded flat, weighing 11,250 pounds, from Kieckhofer Container Corporation, Oakland, to Tri-Valley Packing Association, Modesto; that the minimum lawful rate established by Decision No. 30370, as amended, and required to be charged and collected by respondent and all other highway contract carriers for said transportation was nine cents per 100 pounds applied to a minimum weight of 30,000 pounds, and that the minimum lawful charge for said transportation was the sum of \$27.00.

(2) That respondent charged and collected compensation in full at the rate of nine cents per 100 pounds for the transportation, as a highway contract carrier, on April 22, 1938, of a shipment consisting of 590 bundles of fibreboard boxes corrugated, folded flat, weighing 19,600 pounds, from Kieckhofer Container Corporation, Oakland, to Tri-Valley Packing Association, Modesto; that the minimum lawful rate established by Decision No. 30370, as amended, and required to be charged and collected by respondent and all other highway contract carriers for said transportation was ten cents per 100 pounds applied to a minimum weight of 30,000 pounds, and that the minimum lawful

charge for said transportation was the sum of \$30.00.

(3) That respondent charged and collected compensation in full at the rate of nine cents per 100 pounds for the transportation, as a highway contract carrier, on April 25, 1938, of a shipment consisting of 234 bundles fibreboard boxes corrugated, folded flat, weighing 8,400 pounds, from Kieckhofer Container Corporation, Oakland, to Tri-Valley Packing Association, Modesto; that the minimum lawful rate established by Decision No. 30370, as amended, and required to be charged and collected by respondent and all other highway contract carriers for said transportation was 27 cents per 100 pounds applied to a minimum weight of 10,000 pounds, and that the minimum lawful charge for said transportation was the sum of \$27.00.

(4) That respondent charged and collected compensation in full at the rate of nine cents per 100 pounds for the transportation, as a highway contract carrier, on April 26, 1938, of a shipment consisting of 133 bundles fibreboard boxes corrugated, folded flat, weighing 4,800 pounds, from Kieckhofer Container Corporation, Oakland, to Tri-Valley Packing Association, Modesto; that the lawful minimum rate established by Decision No. 30370, as amended, and required to be charged and collected by respondent and all other highway contract carriers for said transportation was 37 cents per 100 pounds, and that the minimum lawful charge for said transportation was the sum of \$17.76.

(5) That respondent charged and collected compensation in full at the rate of ten cents per 100 pounds for the transportation, as a highway contract carrier, on May 16, 1938, of a shipment consisting of 168 bundles fibreboard boxes corrugated, folded flat, weighing 7,896 pounds, from California Container Corporation, Oakland, to Pacific Grape Products Company, Modesto;

that the minimum lawful rate established by Decision No. 30370, as amended, and required to be charged and collected by respondent and all other highway contract carriers for said transportation was 27 cents per 100 pounds applied to a minimum weight of 10,000 pounds, and that the minimum lawful charge for said transportation was the sum of \$27.00.

(6) That respondent charged and collected compensation in full at the rate of ten cents per 100 pounds for the transportation, as a highway contract carrier, on May 23, 1938, of a shipment consisting of 251 bundles fibreboard boxes corrugated, folded flat, weighing 10,956 pounds, from California Container Corporation, Oakland, to Pacific Grape Products Company, Modesto; that the minimum lawful rate established by Decision No. 30370, as amended, and required to be charged and collected by respondent and all other highway contract carriers for said transportation was 27 cents per 100 pounds applied to a minimum weight of 10,000 pounds, and that the minimum lawful charge for said transportation was the sum of \$29.58.

(7) That respondent charged and collected compensation in full at the rate of ten cents per 100 pounds for the transportation, as a highway contract carrier, on May 26, 1938, of a shipment consisting of 167 bundles of fibreboard boxes corrugated, folded flat, weighing 8,517 pounds, from California Container Corporation, Oakland, to Pacific Grape Products Company, Modesto; that the minimum lawful rate established by Decision No. 30370, as amended, and required to be charged and collected by respondent and all other highway contract carriers for said transportation was 27 cents per 100 pounds applied to a minimum weight of 10,000 pounds, and that the minimum lawful charge for said transportation was the sum of \$27.00.

(8) That respondent charged and collected compensation in full at the rate of nine cents per 100 pounds for the transportation, as a highway contract carrier, on May 26, 1938, of a shipment consisting of 376 bundles fibreboard boxes corrugated, folded flat, weighing 14,000 pounds, from Kieckhofer Container Corporation, Oakland, to Tri-Valley Packing Association, Modesto; that the minimum lawful rate established by Decision No. 30370, as amended, and required to be charged and collected by respondent and all other highway contract carriers for said transportation was ten cents per 100 pounds applied to a minimum weight of 30,000 pounds, and that the minimum lawful charge for said transportation was the sum of \$30.00.

O R D E R

The Commission having instituted the above investigation, public hearings having been held for the taking of evidence, respondent having admitted violations of minimum rate orders issued by the Commission, briefs having been filed, and the matter having been submitted for decision,

IT IS ORDERED that DIAMOND FREIGHT LINES, INC., a corporation, forthwith proceed to collect all undercharges disclosed by the record in this proceeding; report to the Commission under oath the progress made in such collections within fifteen days from the effective date of this order; and to report to the Commission under oath when such collections have been made.

IT IS FURTHER ORDERED that Diamond Freight Lines, Inc., a corporation, cease and desist and hereafter abstain from charging and collecting for transportation, as a highway carrier other than

a highway common carrier, rates less than the applicable minimum lawful rates established by order of this Commission.

The Secretary is directed to cause a certified copy of this opinion and order to be personally served upon Diamond Freight Lines, Inc., a corporation, and this order shall become effective on the twentieth day after the date of such personal service.

Dated, San Francisco, California, this 16th day of April, 1940.

Ray L. Riley
Frank W. Bennett
W. Baker
Justus J. Coe
Commissioners.