

Decision No. 32104

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of ALFRED ZUELOW to charge less) Application No. 23148.
than established minimum rates.)

BY THE COMMISSION:

ORIGINAL

Appearances

W. R. Williams, for applicant.
Gus A. Dreier, for Lumber Haulers Association of
Southern California, interested party.
E. T. Lucey, for The Atchison, Topeka and Santa
Fe Railway Company, interested party.
Phil Jacobson, for Western Truck Lines, Ltd.,
protestant.

O P I N I O N

By this application Alfred Zuelow, an individual operating as a highway contract carrier, seeks authority to charge less than established minimum rates for the transportation of property from Los Angeles and points in the vicinity thereof to three consignees in Blythe, Riverside County. Public hearings were had at Los Angeles before Commissioner Craemer and Examiner Bryant, and the matter is now ready for decision.

The record shows that for approximately four years last past applicant has been engaged in transporting groceries, hardware, lumber and numerous other commodities from the Los Angeles area to Blythe by motor truck. He makes two or three trips a week, gathering the load at several points of origin but transporting on each trip the tonnage of only one of the three consignees. The consignees pay all of the transportation charges. The loads range in weight from 12,000 pounds to approximately 30,000 pounds. This service constitutes substantially applicant's entire business

although he also transports some traffic not here involved, consisting principally of occasional shipments of cement from Crestmore to Blythe, and empty beverage containers and agricultural commodities from Blythe to Los Angeles. He operates only one vehicle unit, a tractor and semi-trailer which he drives himself and garages at his residence in Los Angeles. His wife keeps the books and other records of the operation, and he has no paid employes.

The three consignees involved in this application are A. E. Campbell, a wholesale grocer specializing in the distribution of alcoholic beverages, candies and cigars; Blythe Mercantile Company, a retail store handling groceries, hardware and general commodities; and H. L. Christian, a lumber dealer. Applicant describes the commodities to be transported at the proposed reduced rate as liquors, wine, malt beverages, flavored and phosphated beverages, flour, poultry feed, canned foods, sugar, cured meats, groceries, bread, hardware and lumber.

Until he was recently required to assess and collect minimum rates established by this Commission, applicant made a charge of 25 cents per 100 pounds for the transportation from the Los Angeles area to Blythe, which is the rate for which he here seeks the approval of the Commission.¹ Applicant testified that he had made a satisfactory profit at the 25-cent rate in the past, and was satisfied that he could continue to do so in the future. In support of this statement he explained that over a period of years, with no other source of income, he had paid all operating expenses connected with the transportation service and, after allow-

¹ The minimum rates established for such service vary with the classification of the commodity and weight of the shipment, and therefore may not be readily compared with the proposed rate. They are provided in Highway Carriers' Tariff No. 2, which is Appendix "D" to Decision No. 31606, as amended, in Case No. 4246.

ing for depreciation of his equipment, had been able to make payments on his home and earn a living for himself and his family. He introduced a statement of his revenues and expenses for the period from January 1 to September 30, 1939, according to which he received a net revenue during the period of \$4,880, exclusive of the cement traffic, and encountered expenses of \$4,456 (including a salary of \$40 a week to himself as driver), thus leaving a net income for the nine months of \$424, or approximately \$47 a month.

Zuelow testified that if he were required to continue assessing charges upon the basis of the established minimum rates, he believed that the Blythe consignees would divert the tonnage to their own equipment.² Two of these consignees testified in person, and the third offered evidence in written form, to the effect that they would transport their traffic in trucks which they already owned, or in other equipment which they would purchase if necessary, rather than continue to pay upon the established basis. The shipper witnesses had not made a study of the cost of operating proprietary equipment between Los Angeles and Blythe, but stated that from past experience in truck operation they were convinced that they could transport the traffic at a cost of less than 25 cents per 100 pounds. They stated that they were satisfied with applicant's services and desired to continue them at the rate sought, but that business competition made it necessary to secure the lowest possible transportation charges and they therefore could not continue payment of the established minimum rates.

Western Truck Lines, Ltd., a highway common carrier

² Applicant was unable to state, and the record does not otherwise show, to what extent the total or average charges under the established minimum rates exceed those under the proposed rate.

operating, among other places, between Los Angeles and Blythe, protested the granting of this application. It urged the Commission to dismiss or deny the application, arguing that if the three consignees here involved could properly receive the benefit of a single reduced rate, without classification and with numerous privileges not available to other shippers or carriers, groups of shippers throughout the state would by the same token be justified in banding together to give their traffic to contract carriers, and through such carriers seek similar advantages. Protestant argued that the result of this chain of events would be that common carriers, upon whom the public must rely, would in time be left with insufficient traffic to warrant the maintenance of satisfactory transportation service. Protestant's traffic manager, explaining the operations of his company, testified that it transported occasional shipments to applicant's consignees, and regularly carried, at established tariff rates, canned goods, groceries, lumber and other commodities to companies in Blythe which were in active competition with these consignees.

Zuelow's testimony that his trucking business has been his sole source of income for four years may be taken as an indication that his transportation operations as a whole have returned at least something in excess of the cost of performing the service; and inasmuch as the greater part of the traffic has moved in the past at a rate which, except for the minimum weight, is the same as that now sought, it may be fairly presumed that the operation would continue to be reasonably compensatory in the future provided the same rate were coupled with an appropriate minimum weight.³ This conclusion

³ Applicant proposes a minimum weight of only 400 pounds, which is in marked contrast to the weight of from 12,000 to 30,000 pounds in which the shipments have moved in the past. Applicant explained that the low minimum was desired in order that he might have the option of handling small lots for more than one consignee when space was available on his vehicle.

and presumption are valid, however, only to the extent that they relate to Zuelow's transportation services considered as a unit. The statement of revenues and expenses introduced by applicant is merely a tabulation of the various income and cost items as they occurred, without allocation, and does not in any sense constitute a complete cost study designed to show his cost, in cents per 100 pounds, of transporting the tonnage involved. The record does not disclose his cost of transporting any particular class of traffic, or the tonnage of any particular shipper or consignee, and contains no evidence from which it may be contended that the expense of transporting the various classes of traffic is identical.

Thus, while there is some testimony that applicant's operations as a whole have been compensatory, and while the record shows clearly that both applicant and his consignees consider the charges produced by the established minimum rates to be higher than necessary, the record fails to reveal any justification or necessity for a single rate of 25 cents per 100 pounds for all commodities and all classes of traffic, as is here proposed. Except for the objections to the resulting volume of the aggregate transportation charges, there is no evidence to show or even to suggest that the plan of the established minimum rate structure, based upon the distribution of the cost of transportation according to the classification of the commodities and the weight of the shipments, is in any respect burdensome to this traffic. Applicant has applied the established minimum rates for at least a number of months, and if the practice has resulted in any hardship or difficulty not confined to the total volume of the transportation charges, the record does not so indicate.

In Decision No. 32174 of July 18, 1939, in Application

No. 22159 of C. H. Ward and J. L. Stelling; in Decision No. 32320 of September 19, 1939, in Application No. 22408 of Ben Gruell; and in Decision No. 32941 of March 26, 1940, in Application No. 21815 of Lompoc Truck Company, the Commission held that showings relating solely to the compensatory nature of the operations in the aggregate would not suffice. In the Ben Gruell decision the Commission also stated that while the necessity of classifying individual commodities may result in some inconveniences, these are ordinarily far outweighed by the public benefits accruing from a stabilized basis of known transportation charges. In the instant application it will be seen that the proposed rate basis differs greatly from the form of the established minimum rates, and no need or reason for the difference has been shown.

Moreover, consideration of the record irresistibly raises the question whether applicant has made a serious effort to acquaint himself and his consignees with all of the pertinent provisions of the established minimum rates, rules and regulations, to the end that the lowest lawful charges may be obtained. For example, during the months of August and September, 1939, he transported two shipments of lumber from San Pedro to Blythe, weighing 21,000 and 25,400 pounds, respectively, for E. L. Christian. While the established minimum rate for shipments of these weights was 32 cents per 100 pounds, the rate applicable to a minimum weight of 30,000 pounds was and is only 25½ cents per 100 pounds. Had the consignee been fully informed of the rates applicable to the different minimum weights, it appears probable that he would have ordered lumber in sufficient quantity to have availed himself of the lower transportation charge, which, it will be observed, differs by only one-half cent per 100 pounds

from that herein sought.⁴ Similarly, the shipments of the other two consignees have ranged in weight from 12,000 to approximately 30,000 pounds. If the tonnage of each consignee were offered in shipments of not less than 30,000 pounds, the established minimum rates applicable to many of the commodities would be even lower than that herein proposed, and the rates on a number of others would be only slightly higher.⁵

Although applicant testified that the reduced rate was sought in order to forestall proprietary trucking, and the consignees indicated that continuance of the established minimum rates would probably force them to resort to the use of their own vehicles, it must be observed that none of the consignees had made an investigation to determine whether or not proprietary transportation of the traffic here involved would be practicable, or financially feasible and prudent.

Upon careful consideration of all the facts of record we are of the opinion and find that the proposed rate has not been shown to be necessary, or "reasonable" within the meaning of Section 11 of the Highway Carriers' Act. Under the circumstances here presented the application must be denied.

4

Applicant stated that he preferred not to load his vehicle with as much as 30,000 pounds. However, nothing in the definition of the term "shipment" provided in Highway Carriers' Tariff No. 2, supra, appears to require that the entire shipment be transported on a single trip of a single vehicle in order to receive the benefit of the rate applicable to the total weight of the shipment.

5

Highway Carriers' Tariff No. 2, supra, permits the mixture of two or more commodities at the separate rates applicable to such commodities in straight shipments of the combined weight of the mixed shipment.

O R D E R

This application having been duly heard and submitted, full consideration of the matters and things involved having been had, and the Commission now being fully advised,

IT IS HEREBY ORDERED that this application be and it is hereby denied.

Dated at San Francisco, California, this 14th day of June, 1940.

Ray & Rice
Frank Decker
Ray Woodford
W. H. W. W.
Justus J. Green
Commissioners