

ORIGINAL

Decision No. 30702

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
on the Commission's own motion)
into the operations, rates,)
charges, contracts, and practices)
of S. BRIZZOLARA DRAYING CO., a)
corporation.)

Case No. 4569

RILEY AND HAVENNER, COMMISSIONERS:

Appearances

Louis M. Brizzolara, for respondent.
J. F. Vizzard, for Draymen's Association
of San Francisco, interested party.

O P I N I O N

This is an investigation, instituted by the Commission on its own motion, into the operations, rates, charges, contracts and practices of S. Brizzolara Draying Co., a carrier as defined in the City Carriers' Act,¹ operating in the City and County of San Francisco. The purposes of the investigation are (1) to determine whether or not during the months of May, June and July, 1940, respondent transported property for James A. Shealy Company, Inc. at lesser rates and charges than those prescribed as minima in re Rates of San Francisco City Carriers (39 C.R.C. 636, as

¹ Section 1(f) of the Act (Chapter 312, Statutes of 1935, as amended) defines the term "carrier" as used therein as "every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever engaged in the transportation of property for compensation or hire as a business over any public highway in any city or city and county in this State by means of a motor vehicle or vehicles."

amended); and, (2) to determine, if it should be found that the rates and charges assessed and collected are less than the established minima, whether or not respondent should be required to collect the undercharges. The matter was submitted at a public hearing had at San Francisco.

Records maintained by respondent, photostatic copies of which were received in evidence, show that during the three-month period in question numerous shipments of groceries and grocers' supplies were transported for the Shealy Company. These records also show that most of the shipments consisted of goods forwarded from the shipper's place of business, 124 Spear Street, San Francisco, and delivered to retail stores, restaurants, hotels and other establishments situated throughout the city. The balance of the shipments were comprised chiefly of merchandise for the Shealy Company's stock, which was forwarded from various freight depots, warehouses and other establishments located in the downtown business and industrial district and delivered at 124 Spear Street. A few shipments consisted of goods returned to the shipper by its customers.

Louis M. Brizzolara, respondent's president, testified that James A. Shealy Company, Inc. was, at the time the shipments in issue were transported, a wholesale grocery house, and that in determining charges for these shipments his company had used minimum rates prescribed for commodities transported for such concerns. The rates assessed, he said, are those provided by Items Nos. 320-B and 575-A² of City Carriers' Tariff No. 1, a tariff issued by the Commission in which the minimum rates prescribed for San Francisco draymen have been incorporated. A copy of the tariff as it stood during the period covered by this investigation

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The tariff items referred to are reproduced in Appendix "A" hereof.

was received in evidence. It shows that the items referred to by Brizzolara were then in effect. Under these items rates vary with the type of the service, the weight of the shipment and, to some extent, with the location of the points between which the property is transported but do not vary according to the kind of property hauled. Item No. 575-A, applicable to "city deliveries"³ for wholesale grocery houses, provides rates ranging from 30 cents per shipment for shipments weighing 250 pounds and less to 8½ cents per 100 pounds for shipments weighing more than 6,000 pounds. These rates are applicable between all points within the city. They were assessed on those consignments which the Shealy Company forwarded to its customers. Item No. 320-B, applicable to other than city delivery service,⁴ provides an 80% of 4th class rating for shipments consisting of commodities transported for wholesale grocery houses. Class rates are determined thereunder according to the zone or zones⁵ in which the points of origin and destination are located, and according to the class rate scales for intrazone and interzone traffic. The 80% of 4th class rates range from 32 cents per shipment for both intrazone and interzone shipments weighing 100 pounds and under to rates of 5½ cents per 100 pounds for intrazone and 7 cents per 100 pounds for interzone shipments.

³ The term "city deliveries" as used in the tariff is defined in Item No. 240-A thereof as meaning "transportation of property to retail stores or direct consumers of the property transported when the shipment originates within the City and County of San Francisco at other than a carriers' depot, dock, wharf, pier or landing."

⁴ The item does not apply to distribution of property from "pool cars" as described in and for which rates are provided by Rule No. 30-G of the tariff. This type of transportation, however, is not involved herein.

⁵ There are four such zones. They are described in Item No. 250-B of the tariff.

weighing over 6,000 pounds. These rates were assessed on the shipments delivered to the Shealy Company at its place of business. Both items specify a minimum weight of 400 tons (800,000 pounds) per calendar month for transportation thereunder. They provide, however, that this minimum applies to the aggregate tonnage when service is performed under both items.

Respondent's records show that the aggregate weights of all shipments it handled for the Shealy Company are 572,724 pounds in May, 626,670 pounds in June, and 543,903 pounds in July, and that the charges collected for this transportation based upon these weights and the above described rates amounted to \$542.43, \$569.66 and \$505.40 for May, June and July, respectively.⁶ Brizzolara said that his company had based its charges on the actual weight of the property transported although that weight was less than the tariff minimum under a guarantee from the shipper that it would supply the required tonnage. Tariff provisions relating to monthly weight minima and to tonnage guarantees thereunder are contained in Rule No. 200, which states that:

"Rates based on monthly or annual minimum tonnage requirements will apply only when carrier is furnished with a satisfactory guarantee that the minimum tonnage requirement will be shipped, or when the required tonnage has actually been transported."

Other than to say that the Shealy Company had gone out of business, Brizzolara advanced no reason why his company should not be required to collect undercharges if it were determined that improper application of the tariff had resulted in the collection of charges less than those required to be observed as minima.

The record clearly establishes that during the three-month period embraced by the investigation the Shealy Company was a

⁶ In addition to these sums, respondent, in accordance with requirements of the tariff, collected from the Shealy Company \$30.38 for the service of collecting and remitting moneys on C.O.D. shipments. These charges are not in issue.

wholesale grocery house, that Items Nos. 320-B and 575-A of City Carriers' Tariff No. 1 provide minimum rates applicable to the transportation in question, that the rate items specifically provide a minimum weight of 400 tons per calendar month, that the aggregate weight of the shipments transported in each of the three months involved was less than 400 tons, and that respondent assessed rates and collected charges based on the actual weights of the shipments transported. While, as the record shows, Rule No. 200 of the tariff authorizes the observance of rates and charges subject to a monthly tonnage minimum under a satisfactory guarantee that the required minimum will be shipped, neither that rule nor any other rule or regulation of the tariff permits the 400-ton per month minimum weight of the rate items used by respondent to be disregarded in determining the applicable minimum charges thereunder. Where, as here, the weight involved is less than the established minimum the weight deficit must be charged for to avoid misapplication of the rate items. Therefore, unless such rates as may be provided elsewhere in the tariff for the transportation in issue when applied thereto produce charges which, in the aggregate, are the same as or lower than those collected, it follows that respondent violated outstanding minimum rate orders.

It has been hereinbefore pointed out that most of the shipments in issue are "city deliveries" and that respondent applied the rates named in Item No. 575-A, a part of Section 2 of the tariff, to such shipments. Class rates may not be applied to these shipments in the face of the restriction contained on First Revised Page 20, reading:

"Rates shown in this Section (Section 1 naming class rates) will not apply on shipments for which commodity rates are provided in Section 2 of this Tariff, unless otherwise specifically provided in connection with individual rates."

Moreover, none of the rate items contained in the tariff in other than its class rate section, except Item No. 575-A, apply to this transportation.

To the remainder of the traffic in question respondent applied 80% of 4th class rates under Item No. 320-B. These rates are generally lower than those provided elsewhere in the tariff for the commodities which the record shows were handled by the Shealy Company. Indeed, most of these commodities, of which canned goods are representative, are rated at 4th class and higher, except when transported for a wholesale grocery house in minimum quantities of 400 tons per month. How much greater the charges would be under these rates cannot be ascertained because respondent's records do not in all cases describe the property with sufficient detail to enable it to be classified. In any event, however, the 400-ton minimum would have to be protected on the city delivery transportation alone were other shipments not rated under Item No. 320-B and the resulting charges would exceed those applicable under Items Nos. 320-B and 575-A.

Under the circumstances, it is evident that no basis of assessing charges lower than that provided by Items Nos. 320-B and 575-A is applicable to the traffic under investigation. It is also evident that the minimum weight requirement of those items (400 tons per calendar month) was not observed by respondent and the conclusion is, therefore, inescapable that it assessed lesser rates and charges than those prescribed as minima. Proper application of the established minimum rates requires that the additional weights necessary to protect the tariff minimum, 227,276, 173,330 and 256,097 pounds for May, June and July, 1940, respectively, be

charged for at a rate of $5\frac{1}{2}$ cents per 100 pounds, the lowest rate named in the rate items in question. On this basis the aggregate amount of outstanding undercharges is \$361.19 (656,703 pounds, total weight deficit at $5\frac{1}{2}$ cents per 100 pounds).⁷

Upon consideration of all the facts of record, we are of the opinion and find that respondent S. Brizzolara Draying Co., a carrier as defined in the City Carriers' Act, transported property for James A. Shealy Company, Inc. over the public highways of the City and County of San Francisco during the months of May, June and July, 1940, at lesser rates and charges than those prescribed as minima for that transportation in re Rates of San Francisco City Carriers, supra; that the aggregate amount of the undercharges outstanding is \$361.19; and that respondent should be required to take such reasonable and lawful means as are available to it to collect said undercharges.

O R D E R

A public hearing having been had, the matter having been duly submitted, and the Commission now being fully advised,

IT IS HEREBY ORDERED that S. Brizzolara Draying Co., a corporation, forthwith diligently and in good faith proceed to collect and collect undercharges amounting to \$361.19 on transporta-

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The basis for these calculations is shown below:

Month	Weight of Property Transported	Deficit in 400-Ton (800,000 Pound) Minimum
May	572,724	227,276
June	626,670	173,330
July	<u>543,903</u>	<u>256,097</u>
Total	1,743,297	656,703

The $5\frac{1}{2}$ -cent rate is the 80% of 4th class rate for shipments weighing over 6,000 pounds transported between points in the same zone.

tion for James A. Shealy Company, Inc. during the months of May, June and July, 1940, not later than February 1, 1942, and report to the Commission under oath the amount collected, and if the full amount has not been collected, report in detail the proceedings taken looking to its collection.

IT IS HEREBY FURTHER ORDERED that S. Brizzolara Draying Co. be and it is hereby directed immediately to cease and desist and thereafter abstain, directly or indirectly, or by any subterfuge or device, from charging or collecting any rate or rates less than the minimum rates established by the Commission in its Decision No. 28632, as amended, in Case No. 4084, for the transportation of property for compensation or hire by means of a motor vehicle over the public highways of the City and County of San Francisco, as a carrier as defined in the City Carriers' Act, (Chapter 312, Statutes 1935, as amended).

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission shall cause a certified copy of this decision to be served upon S. Brizzolara Draying Co.

IT IS HEREBY FURTHER ORDERED that the effective date of this order shall be twenty (20) days from the service hereof upon S. Brizzolara Draying Co.

IT IS HEREBY FURTHER ORDERED that the Commission shall have and it does hereby retain jurisdiction of this proceeding for the purpose of making such further investigations and rendering such further orders as may become necessary.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission

of the State of California.

Dated at San Francisco, California, this 25th day of
November, 1941.

W. B. K.
Ray L. Wiley
Justice F. Gardner
Francis D. Havenner
Richard H. Haskins
Commissioners

APPENDIX "A"

Item No.	EXCEPTIONS TO CLASSIFICATION	Class Rating	Minimum Weight																					
	ARTICLE OR COMMODITY																							
320-B Cancels 320-A	<p>GROCERY HOUSES, WHOLESALE, Commodities transported for When hauled by one carrier for one shipper or consignee. (See Note 1)</p> <p>NOTE 1. - (a) Will not apply to City Deliveries. (See Item 575 series) (b) Will not apply to commodities distributed from Pool Cars. (See Rule 30 series)</p> <p>NOTE 2. - The minimum weight of 400 tons per calendar month applies to the aggregate tonnage transported under rating in this item and under rates provided for City Deliveries in Item 575 series.</p>	20% of 4th Class	400 tons per Cal- endar Month (See Note 2)																					
Item No.	SECTION 2 - COMMODITY RATES (Continued) In cents per 100 lbs., except as noted	RATE		Minimum Weight																				
	COMMODITY	Col. A	Col. B																					
575-A Cancels 575	<p>GROCERY HOUSES, WHOLESALE, Commodities transported for</p> <p>Column "A" rates in cents per 100 pounds. Column "B" rates in cents per shipment.</p> <p>City Deliveries:</p> <table border="0"> <tr> <td>Over 250 lbs. or less</td> <td>..</td> <td>30</td> <td rowspan="5">400 tons per Cal- endar Month (See Note)</td> </tr> <tr> <td>Over 250 " but not over 1,800 lbs.</td> <td>11</td> <td>..</td> </tr> <tr> <td>" 1,800 " " " " 2,000 "</td> <td>..</td> <td>200</td> </tr> <tr> <td>" 2,000 " " " " 5,000 "</td> <td>10</td> <td>..</td> </tr> <tr> <td>" 5,000 " " " " 6,000 "</td> <td>..</td> <td>495</td> </tr> <tr> <td>" 6,000 "</td> <td>8½</td> <td>..</td> <td></td> </tr> </table> <p>NOTE. - The minimum weight of 400 tons per Calendar Month applies to the aggregate tonnage transported under rates in this item and under rating provided in Item No. 320 series.</p>	Over 250 lbs. or less	30	400 tons per Cal- endar Month (See Note)	Over 250 " but not over 1,800 lbs.	11	..	" 1,800 " " " " 2,000 "	200	" 2,000 " " " " 5,000 "	10	..	" 5,000 " " " " 6,000 "	495	" 6,000 "	8½	..				
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(END OF APPENDIX)