

Decision No. 41572

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation of BATTEATE LIVESTOCK)
TRANSPORTATION CO. to determine whether)
its operative rights should be revoked) Case No. 4942
or suspended for failure to mark live-)
stock equipment as required by Decision)
No. 37694 in Case No. 4293.)

J. T. Phelps for Field Division, California Public Utilities
Commission
Berol and Handler, by Marvin Handler, for Batteate Livestock
Transportation Co.

POTTER, Commissioner:

O P I N I O N

On February 27, 1945, by Decision No. 37694 in Case No. 4293 (45 CRC 610), all radial highway common carriers and highway common carriers engaged in hauling livestock were directed to file with the Commission lists of equipment indicating the carrying capacity of each vehicle for cattle, hogs, sheep and other commodities grouped therewith for rate-making purposes, and to stencil or other-⁽¹⁾ wise prominently display on each unit the carrying capacity thereof.

On March 16, 1948, the Commission instituted this investigation to determine whether the highway common carrier certificate and radial highway common carrier permit held by Batteate Livestock Transportation Co. should be revoked or suspended for failure to comply with the order to stencil equipment. The case was submitted

(1)

A Commission letter, dated December 8, 1947, forwarded to all highway carriers of livestock, directed compliance with the decision and suggested methods of marking, and also stated that "The equipment may be marked in any manner that will clearly show the capacities."

on April 12, 1948, at a public hearing held at San Francisco.

The evidence showed that during a check of livestock equipment at Union Stockyards, South San Francisco, on February 16 and 17, 1948, representatives of the Field Division observed four loaded truck-trailer units bearing Batteate signs and equipment numbers. None of the vehicles had marks indicating its carrying capacity.⁽²⁾ The equipment numbers, makes and license numbers of the unstencilled vehicles were found to correspond with those contained in lists of equipment inspected later in the carrier's office. The equipment numbers observed also appear on respondent's shipping documents in evidence covering the movements in question.

It was further established that a copy of Decision No. 37694 had been mailed to respondent on March 23, 1945, and that the letter of December 8, 1947, directing compliance with that decision, had been received by the carrier. In its reply to the letter, dated February 12, 1948, the carrier enclosed a copy of a tariff page previously filed with the Commission by its tariff agent, containing a list of sixteen trucks and sixteen trailers, with their corresponding code numbers, dimensions, carrying capacities and truckload minimum weights. The four unstencilled truck-trailer combinations seen during the check period were represented on these lists by code numbers corresponding to the makes and types of the vehicles observed.

At the conclusion of the Field Division's presentation, respondent moved to dismiss the investigation on the ground that the evidence failed to connect Batteate Livestock Transportation Co. with the ownership of the unstencilled equipment observed at the stockyards. The motion was taken under submission, and respondent was directed to

(2)

The investigator who testified stated he saw other Batteate vehicles bearing stencil marks during the period of observation.

proceed with its defense.

It is true that no documentary evidence of title was produced to show who owned these trucks, nor were registration data of the State Department of Motor Vehicles made available. Such evidence as there was, however, clearly pointed to possession, if not ownership, of the vehicles by respondent. They were marked with the carrier's insignie; their code numbers agreed with those on the carrier's freight bills and on the lists of equipment maintained in its office and officially filed with the Commission by its tariff agent; the license numbers observed on the vehicles at the stockyards corresponded with those found in the carrier's office records belonging to equipment whose code numbers were identical with those found on the vehicles themselves. The motion to dismiss is without merit, and respondent was properly directed to proceed with its defense.

Respondent's president and principal stockholder, A. J. Batteate, Jr., who is also actively in charge of operations, testified that he was familiar with the stencilling order and had been advised by telephone, prior to the dates the equipment was observed, to stencil the trucks. He readily admitted that the trucks were engaged in hauling livestock on the dates they were inspected at the Union Stockyards. Within three months after the issuance of Decision No. 37694, he said, all his equipment was stencilled and is normally repainted each year just before spring. The four combination units here involved were repainted between November, 1947, and January, 1948, but were not restencilled, due either to the painter's neglect or to the necessity for using the trucks before the stencilling could be done. Batteate conceded that he might have been neglectful himself to some extent. In any case, he said, the failure to mark

the equipment resulted in no misunderstandings with the six or seven shippers (packing houses) he served in the Bay Area, as these patrons have up-to-date lists of all his equipment showing capacities and minimum weights, which are the same for all trucks and for all but two trailers. No changes occurred in the minima or in the billing of freight charges during the period the units in question were unstencilled.

The foregoing comprises the essential evidence from which it is to be determined whether respondent's operative rights should be revoked or suspended. Respondent's failure to comply with the stencilling order was clearly established. That provision of the decision (as well as the one requiring filing of equipment lists) was made necessary by the adoption in 1945 of a scheme of single-scale truckload rates for livestock transportation based on 90 per cent of equipment capacity. Although endorsed by carrier and shipper interests, the proposal constituted a radical departure from past rate-making practices. It was put into effect, along with an increase in the minimum rate level, as a temporary measure designed to restore highway common carrier service to the livestock field, from which it had largely been driven by the prevailing low level of minimum rates, wartime equipment shortages, and the freedom enjoyed by the radial operators from observance of fixed rates above the prescribed minima.

While it may be true, as contended by respondent's president, that no prejudice resulted to the carrier's patrons from the failure to stencil the trucks - since the shippers at all times had available complete equipment lists showing capacities and minimum truckload weights - it is also a fact that respondent is an experienced operator and had full knowledge of the requirements

of the Commission's order. Moreover, the letter of December 8, 1947, and the telephoned directions to stencil equipment, given prior to February 16, 1948, must be considered as having placed respondent on notice that something more than casual regard for the stencilling order was required. In the light of these warnings, it cannot be said that respondent's practice of keeping its patrons advised, as indicated above, was an acceptable substitute for full compliance with a direction the purport of which was clearly understood.

Respondent is engaged in an activity vital to the welfare of the State, and should not be required to cease or suspend all operations in the absence of compelling reasons for such action. Those reasons do not exist here. At the same time, respondent's failure to observe the Commission's order, under the circumstances here shown, warrants temporary suspension of its right to engage in a portion of its transportation activities. It is therefore recommended that respondent's permit to operate as a radial highway common carrier be suspended for a period of five days, but that no action be taken at this time with respect to respondent's certificated rights.

The following form of order is submitted.

O R D E R

An investigation into the operations and practices of Batteate Livestock Transportation Co. having been instituted by the Commission on its own motion, a public hearing having been had, evidence having been received and considered, the matter having been submitted for decision, the Commission being now fully advised, and basing its order upon the findings and conclusions contained

in the foregoing opinion;

IT IS ORDERED:

(1) That radial highway common carrier permit No. R-41-574, held by Batteate Livestock Transportation Co., respondent herein, be and it is hereby suspended for a period of five days, commencing at 12:01 a.m. of the effective date of this order and continuing to 12 midnight of the fourth day thereafter.

(2) During said period of suspension it shall be unlawful for respondent to engage in the transportation of property, including livestock, for compensation over any public highway in the State of California as a radial highway common carrier as defined in Section 1(h) of the Highway Carriers' Act. (Stats. 1935, Chap. 223, as amended.)

The effective date of this order shall be the twentieth day after service thereof upon respondent.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Public Utilities Commission of the State of California.

Dated at San Francisco Co, California, this 11th day of May, 1948.

R. Z. Sweeney
Justus J. Cracauer
Wm. F. Lowell
Harold F. Hale
Kenneth Potter
COMMISSIONERS