

Decision No. 43202

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the)
Commission's own motion into the opera-)
tions, rates, charges, contracts, accounts,)
rules, regulations and practices, or any)
of them, of Redding-Eureka Freight Lines,)
a corporation.)

Case No. 5082

Carlton D. Stevenson and Sherman M. Hansen for respondent.
C. A. Millen for Sacramento Corning Freight Lines, Ltd.,
interested party.

Hal F. Wiggins for Transportation Department and Department
of Finance and Accounts, Public Utilities Commission
of the State of California.

O P I N I O N

This proceeding is an investigation instituted on the Commission's own motion into the operations, rates, charges, contracts, accounts, rules, regulations and practices of Redding-Eureka Freight Lines, a corporation, hereinafter called respondent.

The purpose of the investigation is to determine

- (1) whether respondent may be operating, or since October 21, 1948 may have operated, in violation of the provisions of Decision No. 42057, dated September 21, 1948, in Case No. 4808, General Order No. 84-B, and respondent's published tariffs on file with the Commission;
- (2) whether respondent should be ordered to cease and desist from any such violations; and
- (3) whether the operative rights, or any of them, of respondent should be cancelled, revoked or suspended.

A hearing was held before Examiner Bradshaw at Redding.

Respondent is engaged in operations pursuant to authority granted by Decision No. 41536, dated April 27, 1948, in Application No. 29230. By this decision, it was authorized to lease from

Humboldt Motor Stages Inc., with an option to purchase, certain physical properties and operative rights

- (1) as a passenger stage corporation for the transportation of passengers, baggage and packages of express weighing 100 pounds each or less on passenger carrying vehicles only between Mad River, Weaverville, Lewiston Junction and Minersville and intermediate points via Hay Fork, Peanut and Douglas City; and
- (2) as a highway common carrier for the transportation of property between Willow Creek, Redding, Mad River, Minersville and intermediate points.

By the same decision, a certificate of public convenience and necessity was granted to respondent authorizing operations as a highway common carrier for the transportation of property between Willow Creek, Redding, Mad River and Minersville, excluding Willow Creek, on the one hand, and, on the other hand, Scotia, Trinidad, Willow Creek and intermediate points via Eureka, Arcata and Blue Lake, excluding Willow Creek. The decision provided that, if it should be desired to exercise the option to purchase, a supplemental application must be filed seeking authority to transfer the properties.

By Decision No. 42057, the Commission adopted its General Order No. 84-B, prescribing regulations governing the handling of C.O.D. (collect on delivery) shipments and accounting for collections thereon by various for-hire carriers, including highway common carriers and passenger stage corporations. Carriers electing to handle C.O.D. shipments were required to remit to consignors all C.O.D. moneys collected on such shipments promptly and in no event later than 10 days after delivery to the consignee, unless the consignor instructs otherwise in writing. A bond in such form as the Commission may deem proper in a sum of not less than \$2,000 was also required to be provided and filed with the Commission.

The same order also directed highway common carriers, passenger stage corporations and certain other carriers electing to handle C.O.D. shipments to establish in their filed tariffs a rule stating that in handling C.O.D. shipments the carrier will remit to the consignor all moneys collected on such shipments promptly upon collection of any and all moneys, and in no event later than 10 days after delivery to the consignee, unless the consignor directs otherwise in writing. It was also ordered that no carrier subject to the general order shall handle any C.O.D. shipment unless and until a bond, such as required, has been filed with the Commission.

This general order became effective November 15, 1948. A copy was served upon respondent on October 6, 1948.

A rule of the nature prescribed by General Order No. 84-B was published in respondent's tariffs, including those naming through joint rates to which it is a party.

An employee of the Commission's division of permits and fees testified that a surety company notified the Commission on November 10, 1948 that a bond covering C.O.D. shipments handled by respondent had been issued effective November 15, 1948. He asserted, however, that the bond was not filed with the Commission until April 8, 1949, although the necessity for such a filing was called to the attention of the surety company and respondent on two occasions.

The Commission's district transportation representative at Redding presented a statement setting forth C.O.D. shipments transported by respondent between November 8, 1948 and February 2, 1949, on which, except as indicated, the charges had not been remitted to consignors as of June 29, 1949. A total of 76 such

shipments are listed. One of these shipments appears to have been made prior to November 15, 1948, the effective date of General Order No. 84-B. The amounts which were to have been collected and remitted to consignors ranged from \$1.40 on one shipment to \$675.00 on another. The length of time respondent was delinquent in remitting the amounts collected varied from 23 to 202 days. It also appears that the charges on 45 of the shipments were remitted to consignors between February 9, 1949, and June 25, 1949, and in three instances partial payments had been made by June 29, 1949.

The district representative testified that respondent had made arrangements with one consignor whereby a portion of the freight charges on current shipments would be withheld to offset unremitted C.O.D. collections. He also declared that a check of respondent's records revealed that it had not been in arrears in remitting any collections made on shipments which moved between February 2, 1949, and June 29, 1949.

An accountant in the employ of the Commission's department of finance and accounts presented an exhibit disclosing certain information compiled from respondent's accounting records. A comparative balance sheet as of January 31, 1949, and May 31, 1949, indicates that on the date first mentioned unremitted C.O.D.'s amounted to \$5,967.36, while on the latter date they amounted to \$3,161.11. He testified that respondent's books as of the end of June, 1949, indicate a further reduction of about \$350.

Statistical data submitted by this witness indicate that substantial reductions have been made in a number of operating expense accounts since January, 1949. He asserted that respondent's officers have been working as drivers or as agents in conducting

the operations and their wives have been taking care of the office work without compensation. In the opinion of this witness, economies have been made to the point that the ability to continue operations might be questionable.

It would appear from other evidence offered by members of the Commission's staff that by certain items which have been entered in its accounts respondent may have exercised the option to acquire the property referred to in Decision No. 41536 and also issued 40 shares of stock without authority so to do. The record indicates that the annual report filed by respondent for 1948 did not cover the calendar year, as required by the Commission's regulations.

Respondent's president testified that between June 29, 1949, and July 6, 1949, the date of the hearing, the amount of unremitted C.O.D. collections had been further reduced by \$158.57. He declared that every effort is being made to pay all outstanding charges as quickly as possible. The fact that the officers of the company are working as drivers or agents without compensation was cited as an example of the action taken by respondent to reduce expenses so as to provide funds to straighten out its C.O.D. accounts. It was stated that commencing in February of this year all C.O.D. moneys have been kept separate from other cash which may be on hand and are carried in a separate bank account.

It is clear from the record, and we find, that respondent failed to remit to consignors C.O.D. collections as directed by General Order No. 84-B and as provided in its published tariffs. We further find that respondent was delinquent in the filing of a bond covering amounts due on C.O.D. shipments as required by the

same general order. Respondent's conduct in this regard was in violation of Sections 17 and 30 of the Public Utilities Act.

The record does not definitely reveal the circumstances which lead to the deplorable situation brought to our attention in this proceeding. An exhibit of record, however, indicates that from May 1, 1948, to January 31, 1949, respondent's operating expenses were \$17,435.60 greater than the revenues received and that as of January 31, 1949, respondent's current assets reflected a deficit of \$1,443.94, while its current liabilities amounted to \$12,540.45. Apparently the unfavorable conditions under which operations were conducted constituted factors which influenced respondent to use moneys collected on C.O.D. shipments for unauthorized purposes.

After carefully reviewing the record, we are of the opinion that, notwithstanding the seriousness of the offence of which respondent is guilty, the revocation or suspension of its operative rights will not be ordered at this time. In view of the good demeanor of respondent's officers since the early part of this year and at the hearing before the Commission, we are satisfied that respondent has been and will continue to effect payment of all outstanding unremitted C.O.D. collections as expeditiously as it is possible to do so. On the other hand, the suspension or revocation of respondent's operative rights in all probability would prevent it from making restitution. Such action would also deprive the public of common carrier service.

Under the circumstances, respondent will be directed to file with the Commission on or before the 10th day of September,

1949, and each month thereafter, a verified statement setting forth all payments of delinquent C.O.D. moneys made during the preceding month and the total amount outstanding at the end of the month. This proceeding will be reopened for further hearing to be held not earlier than 90 days after this date for the purpose of receiving evidence concerning any developments which may occur in the meantime.

O R D E R

Public hearing having been had in the above-entitled proceeding, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

(1) That with respect to shipments hereafter transported, Redding-Eureka Freight Lines be and it is hereby directed to cease and desist from failing or refusing to collect and remit to consignors all C.O.D. (collect on delivery) moneys in the manner required by the provisions of the Commission's General Order No. 84-B and as provided for in the published tariffs of Redding-Eureka Freight Lines on file with the Commission, or to which it may be a party.

(2) That Redding-Eureka Freight Lines be and it is hereby directed to file with the Commission on or before September 10, 1949, and monthly thereafter until further ordered by the Commission, a verified statement under oath showing (1) in itemized form all amounts paid during the preceding month covering C.O.D. moneys collected but not remitted in accordance with the requirements of General Order No. 84-B and (2) the total amount of all unremitted C.O.D. moneys outstanding on the last day of such preceding month.

(3) That the submission of this proceeding be and it is hereby set aside and the matter reopened for further hearing at a time and place to be set not earlier than 90 days after the date of this order for the purpose of receiving further evidence.

The Secretary is directed to cause a certified copy of this decision to be served upon Redding-Eureka Freight Lines.

The effective date of this order shall be 20 days after the date of such service.

Dated at San Francisco, California, this 9th day of August, 1949.

R. Z. Donahue

James P. Farrell

Frederick Pottier
Commissioners