A.30978 SJ

ORIGINAL

Decision No. 44407

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WALTER A. LAMBERT and EMMA LAMBERT for relief from minimum rates established in Highway Carriers' Tariff No. 2, Appendix "D" to Decision No. 31606, as amended, in Case No. 4246, for transporting scrap iron.	))))))	Application No. 30978

Appearances

Philip M. Wagy, for applicants.

J. M. Souby, Jr. and William Meinhold, by William Meinhold, for The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, protestants.

O P I N I O N

Walter A. Lambert and Emma Lambert are engaged in transporting property for compensation over the public highways under authority of permits authorizing operations as a radial highway common carrier and highway contract carrier. In connection with certain transportation of scrap iron they seek authority to assess lesser rates than the established minimum rates.

Public hearing of the matter was had before Examiner Abernathy at Bakersfield on April 25, 1950.

The transportation involved herein is performed for the K & D Salvage Company which operates two salvage and junk yards in the vicinity of Bakersfield. Scrap iron is accumulated at both yards and shipped to steel mills and other users of scrap iron at Niles, Pittsburg, South San Francisco and Taft. One of the two salvage yards is located on railroad spur track facilities; the other is not. The rail rates from the yard which is served by rail are lower than the minimum rates which otherwise apply to the salvage company's shipments.[1]

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[1] The applicable minimum rates are those set forth in Highway Carriers' Tariff No. 2 (Appendix "D" to Decision No. 31606, as amended, in Case No. 4246).

Applicants have been transporting scrap iron from this yard at the rail rates under authority of alternative provisions in the minimum rate tariff. They seek authority herein to assess the rail level of rates for transportation from the other yard also. They say that the yards are less than two miles apart, that there virtually is no difference in the cost of the transportation performed from either yard, and that the rate differential is artificial and an unnecessary burden upon the salvage company.[2]

Evidence in support of the application was submitted by applicants, by a public accountant, and by a representative of the salvage company. Applicants stated that the transportation for the salvage company is being performed under contract, and that it comprises the larger part of their total operations. They were of the opinion that it is profitable. They said they are able to make a living from their business and that all of their current bills are paid. The public accountant submitted an exhibit setting forth the financial results of applicants' operations during 1949. He reported total revenues of $14,203 and expenses of $10,878. He said that the expenses do not include any allowance for wages for Walter Lambert, who drives the truck used in the operations, nor do they allow for any compensation for bookkeeping services performed by Emma Lambert.

The representative of the K & D Salvage Company testified that the price which his company receives from the sale of scrap iron is set by its customers, who will not make allowance for higher transportation costs than those applicable from the yard served by rail. As a consequence his company is obliged to assume the differential in transportation costs between the two yards. He said his company ships by rail and by truck. The method of shipment is selected by the

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[2] Applicants heretofore have been transporting scrap iron from only the yard having the rail facilities.

consignees. Freight charges are paid in some instances by the consignees and in other instances by the salvage company.[3] The witness asserted that the volume of shipments of scrap iron is dependent upon market conditions; that the present market is unsettled; and that future conditions are uncertain.

A representative of The Atchison, Topeka and Santa Fe and of the Southern Pacific railroads appeared in opposition to granting of the application and participated in the examination of applicants' witnesses. In other respects granting of the application was not opposed.

Applicants have herein sought authority to assess lesser rates than the minimum rates under Section 11 of the Highway Carriers' Act, which provides:

> "If any highway carrier other than a common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum rates . . . ., the Railroad Commission shall, upon finding that the proposed rate is reasonable authorize such rates less than the minimum rates . . . . . ."

It appears that the sought authority may not be granted for two reasons. First, the reasonableness of the proposed rates was not established. Applicants have endeavored to show the reasonableness of their proposal by undertaking to show that their total operations, which include a substantial volume of service for the salvage company at the same rates as those sought herein, have been compensatory. However, it is apparent that any profit earned during 1949, after allowance for services performed by applicants, was meager.[4] Moreover,

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[3] Shipments to the steel mill at Niles were said to be on a freight collect basis, the scrap iron being sold to the mill there on a basis f.o.b. the salvage company's yards. Applicants did not transport scrap iron to destinations other than Niles during 1949.

[4] It appears that after applicants were compensated for their services, little, if any, of the revenue margin of $3,325 was available for profit.

even though it were concluded that the total operations during 1949 were reasonably compensatory, such a showing does not establish that the services for the salvage company were likewise profitable. The transportation of scrap iron comprised only about half of applicants' total services.[5] The reasonableness or profitableness of the sought rates is likewise not established by the fact that they are the same as the rail rates which applicants are assessing under alternative provisions of Highway Carriers' Tariff No. 2. Highway contract carriers and radial highway common carriers may as a matter of statutory right provide the same transportation as railroad companies at the same rates, but it does not follow that a competitively induced rate is reasonable per se where the competitive forces do not apply.

A further reason why the sought authority may not be granted is that insofar as the transportation involved herein is concerned it appears that applicants' operations are those of a common carrier. Although the scrap iron purportedly is being transported for the salvage company, the control of the selection of carriers and the payment of freight charges by the consignees indicate that the consignees are the shippers in fact. There was no suggestion of a direct contractual relationship between applicants and the consignees. Assertedly a contract exists between applicants and the salvage company. However, the evidence indicates that the degree of mutuality which would characterize a valid contractual operation is lacking.[6]

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[5] Walter Lambert asserted that transportation of scrap iron accounts for 70 percent of the total. This estimate seems high in the light of evidence which the accountant submitted. Of the 130 loads transported by applicants during 1949 not more than 68 loads, or 52 percent, were transported for the salvage company.

[6] Apparently no particular obligation is imposed by the contract upon the salvage company. The testimony of the salvage company witness suggests that he considers the volume of the shipments to be tendered to applicants is discretionary with his company. Walter Lambert stated that the contract does not specify a minimum guarantee as to compensation, nor does it specify any starting or termination time or termination arrangements.

For the purposes of this proceeding applicants have not established that their operations are such that they may be properly authorized to charge less than the established minimum rates.

O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the above-entitled application be and it is hereby denied.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 20th day of June, 1950.

Commissioners