

Decision No. 45161

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CAPITAL FREIGHT LINES, a corporation,)
for authority to charge less than the) Application No. 31589
minimum rates under the provisions of)
the Highway Carriers' Act.)

Appearances

Edward M. Berol and R. H. Schwab, for applicant.

Charles W. Burkett, Jr., for Southern Pacific
Company, interested party.

O P I N I O N

Applicant is a California corporation transporting property as a for-hire carrier over the public highways under authority of permits issued by this Commission. Among other things it transports box shock in truckload lots from the factory of the Shasta Box Company, near Redding, to various destinations within California. In this proceeding it asks the Commission to find that certain rates apply as minimum for its services for the box company. In the alternative it seeks authority to charge lesser rates than the established minimum rates.

Public hearing of the matter was had before Examiner Abernathy at Sacramento on September 7, 1950. Evidence was submitted by applicant's general manager, by a consulting engineer, and by the manager of the box company. A representative of the Southern Pacific Company participated as an interested party in the examination of the witnesses.

The minimum rates applicable to the transportation involved herein are those in Highway Carriers' Tariff No. 2 (Appendix "D" of

Decision No. 31606, as amended, in Case No. 4246). Alternative provisions of this tariff permit highway carriers to assess the rates of common carriers by rail when the rail rates result in lower charges for the same transportation.¹ According to the record, applicant has assessed the rail rates for several years in the belief that its service was the "same transportation," within the meaning of the tariff, as that of the rail carrier serving the box company. In the early part of this year members of the Commission's staff conducted an informal investigation of applicant's operations and advised applicant that its service for the box company did not appear to be the same as that of the rail carrier. Applicant has since assessed charges on the basis of the rates set forth in Highway Carriers' Tariff No. 2.

Applicant's present rates are deemed by the box company to be excessive for the services involved. The company's manager asserted that because of conditions under which his company operates it cannot pay the present rates. He said that the marketing of box shock is a highly competitive undertaking. He declared that his company is at a disadvantage as compared to competing box companies in Sacramento and in other points in the Sacramento valley. It is more distant from the principal markets; its labor costs are higher; and other companies are located directly on rail and can ship at the rail rates. He said that he "flatly told" applicant that unless it could reduce its present rates his company would either lease or buy equipment and perform its own transportation.

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"Same transportation" is defined in Highway Carriers' Tariff No. 2 as meaning "transportation of the same kind and quantity of property and subject to the same limitations, conditions, and privileges, although not necessarily in an identical type of equipment."

In order to comply with the box company's demands for lower rates, applicant seeks herein a formal determination by the Commission that the rail rates may be applied as the minimum rates for its transportation for the box company; in the alternative it asks that it be authorized to assess certain rates which are higher than the rail rates but lower than the rates which otherwise would apply. Applicant's manager expressed the belief that either of the sought bases of rates would enable his company to retain the transportation business of the box company. He stressed the importance to his company of the tonnage involved. He said that it accounts for about 35 percent of his company's total revenues. He doubted that applicant could continue in operation if the traffic should be diverted to other means of transportation.

Included in the evidence which was adduced in support of the application is a description of the manner in which shock is tendered for transportation purposes to applicant and to the rail carrier that serves the box company. Various financial data were also submitted to show the financial results of the service involved.

The testimony of applicant's manager shows that the service of his company commences at the Shasta company's box factory, at which point applicant receives the shock for transportation. The evidence shows further that the shipments which move by rail are first transported by the box company at its own expense from its factory to the rail loading point adjacent to its properties, a movement in excess of 1200 feet. The precise scope of the service that is available under the rail rates was not delineated herein. On this record it seems clear, however, that the rail rates do not comprehend any transportation other than from the rail loading point.

Under the circumstances it is evident that applicant's service directly from the box factory is not the "same transportation" as that of the rail carrier.

Applicant's alternative proposal, that involving its request for authority to assess lesser rates than the minimum rates, is made pursuant to Section 11 of the Highway Carriers' Act. This section provides that

"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"

In conformity with the provisions of this section two questions are presented for determination: (a) whether applicant is "other than a common carrier," and (b) whether its proposed rates are "reasonable."

With respect to the character of applicant's operations, the record shows that applicant holds permits from the Commission authorizing service as a highway contract carrier and as a radial highway common carrier. The nature of the transportation which may be provided by a highway contract carrier is distinctly different from that of a radial highway common carrier. Highway contract carriage does not include the element of service "for the public generally or any limited portion of the public."² On the other hand a radial highway common carrier is one who dedicates and holds out his transportation services to the public, or a substantial portion thereof, and who does not usually or ordinarily operate between fixed termini or over a regular route. The permits which applicant

² Pacific Southwest Railroad Association and Marin-Sonoma Fast Freight vs. J. P. Nielsen, 49 Cal.P.U.C. 216, 219.

holds would indicate that it is undertaking to provide two different types of transportation service. Statements of applicant's counsel show, however, that the carrier "makes absolutely no distinction or designation in as far as the operations between the two as to what might be done."

Applicant's operations relating to the transportation of box shook assertedly are those of a highway contract carrier, regardless of what might be the nature of its carriage otherwise. The carrier's manager stated that a contract governs the services for the Shasta company and that contractual agreements apply to similar services for other box companies.³ He said that the contract covering the services involved herein provides that Capital Freight Lines will transport the shook of the box company and that it will assess the prevailing rates for its service. He stated that the contract does not specify a termination date nor does it specify any minimum quantity to be transported per month. According to the witness, the contracts with the other box companies are oral and provide that Capital Freight Lines will be given the shook of the other box companies to transport so long as it gives satisfactory service.

Evidence to show a contractual relationship between applicant and the Shasta company was also submitted by the box company's manager who stated that the contract was set forth in a letter written several years ago to the box company by its president (who was then also president of applicant herein) stating that "Capital Freight Lines was to do all the box shook hauling originating from Redding insofar as they were competitive with the minimum rates and gave a service which was satisfactory."⁴

³ It appears that 45 to 50 percent of applicant's revenues are earned from transporting shook for box companies other than the Shasta Box Company.

⁴ The record was left open at applicant's request until October 6, 1950, to permit the introduction in evidence of the letter to which the box company's manager referred. However, the letter was not submitted.

Applicant's "contracts" are not such as to distinguish its carriage of box shook as that of a highway contract carrier. It appears that they are principally informal understandings instead of binding obligations assumed by mutual agreement between the carrier and its shippers. Even with respect to the "contract" covering the transportation involved herein it appears that it does not control the relationship of applicant and the Shasta company, one to the other, since the evidence shows the box company utilizes the services of the rail carrier for transporting shook even though the contract assertedly requires that all of the company's shook be transported by applicant. For the purposes of this proceeding it has not been established that applicant is "other than a common carrier."⁵

Regardless of the fact that applicant has not shown its operations to be other than of a common carrier, the sought authority to assess lesser rates than the minimum rates must be denied. Applicant undertook to establish the reasonableness of its proposal through evidence introduced by the engineer witness to show that the service for the Shasta company has been profitable in the past and that under the sought rates it will continue to be profitable. The engineer reported that the carrier's net earnings for 1949, before allowance for income taxes, amounted to 4.72 percent of its gross revenues from all of its transportation services. Approximately 73 percent of the gross revenues was earned from services other than the transportation involved herein. With the other services accounting for the larger part of the total revenues, it is clear that the combined revenue showing does little to show the adequacy of earnings from the transportation for the Shasta company alone.

⁵ Even though it appeared that the "contracts" were mutually binding obligations, that fact alone would not necessarily establish applicant's operations as of a highway contract carrier. For a discussion of distinguishing features of contract carriage see the Nielsen case, supra.

On the basis of a study which he had made of applicant's operations, the engineer calculated that the sought rates would return net earnings, before income taxes, amounting to 10.8 percent of the gross revenues therefrom. The engineer's cost showing, however, is subject to several important infirmities. It does not reflect all of the applicable costs. Certain expenses, such as depreciation expense and costs of insurance and licenses, were allocated partly on the basis of applicant's annual vehicle use (use factor) which was estimated to be 3498 hours per vehicle. Tested in relation to the basic data set out in the engineer's exhibit, this use-factor figure is obviously excessive and the allocation of costs thereon resulted in an understatement of costs.⁶ Furthermore, some of the cost figures were developed on the basis of unsegregated or combined data covering applicant's various services. The costs of a particular service are not disclosed by figures which include costs applicable to other operations. In the development of certain cost factors the engineer relied upon estimates but he did not establish the validity of his estimates. Operating speeds of applicant's vehicles were estimated, for example, and the estimates were represented as the product of informed judgment. The figures may represent average vehicle speeds of carriers observed by the engineer in the ambit of his experience, but without direct evidence that they are representative of applicant's operations it does not appear that the estimates are a suitable base upon which to develop the costs of the service involved herein.

⁶ The use-factor estimate was developed from an analysis of applicant's time records for May, 1949. Had the analysis been extended over the year ending with April, 1950, the full period covered by the engineer's report, the indicated use factor would have been not more than 3000 hours. Had the estimate been made on the basis of the time records for the first four months of 1950, during which time additional vehicles were put in service, the use-factor figure would have been between 2150 and 2700 hours, depending upon the number of vehicles being operated.

Upon careful consideration of all of the facts and circumstances of record the Commission is of the opinion and finds that:

- a. The service which applicant performs in transporting box shock directly from the factory of the Shasta Box Company is not the same transportation as that performed by common carriers by rail in transporting shipments of box shock from the railhead adjacent to the box company's properties.
- b. Applicant has not shown that with respect to the transportation service involved herein its operations are those of a highway carrier "other than a common carrier" within the meaning of Section 11 of the Highway Carriers' Act.
- c. Applicant has not shown that the lesser rates than the minimum rates, for which it seeks authorization, are "reasonable" within the meaning of Section 11 of the Highway Carriers' Act.

The application will be denied.

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 19th day of December, 1950.

A. J. Anderson
Justice J. Craven
Charles D. Dill
Harold H. Hill
Kenneth F. Potter
 Commissioners