

ORIGINAL

Decision No. 46856

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, rates, )  
and practices of WALTER ALVES, doing ) Case No. 5263  
business as ALVES SERVICE TRANSPORTATION )  
COMPANY. )

Marquam C. George and Merrel Kays, for respondent.  
Edward M. Berol and Bertram S. Silver, for O.K.  
Trucking Company, interested party.  
Gordon, Knapp and Gill, by Frederic A. Jacobus, for  
Pacific Freight Lines, The Atchison, Topeka & Santa  
Fe Railway Company and Santa Fe Transportation  
Company, interested parties.

O P I N I O N

This proceeding was instituted upon the Commission's own motion to determine whether Walter Alves, doing business as Alves Transportation Company, hereinafter called respondent, has violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

Public hearings were held at San Francisco and Los Angeles before Examiner Silverhart.

Respondent maintains its principal place of business in San Leandro and has been engaged in the transportation of property for several years past and since February 20, 1946, has held permits to operate as a radial highway common carrier and highway contract carrier.

An associate transportation rate expert in the employ of the Commission examined respondent's records in June, September and October of 1950. Of the records so examined, 32 invoices concerning the movement of oranges and lemons by respondent during the period from March 10, 1950, to July 13, 1950, and 43 invoices running from July 20, 1950, to September 10, 1950, were placed in evidence as Exhibits 4 and 5, respectively.

The invoices making up Exhibit 4 showed that the shipments of oranges and lemons mentioned therein were consigned to several produce merchants located in Oakland and San Francisco; the consignors, however, on 16 of such invoices were not disclosed. Transportation charges set forth on 24 of the invoices in Exhibit 4 were assessed on the basis that the shipments shown thereon had one point of origin; the points named consisted in the aggregate of San Fernando, Placentia, Claremont, Fillmore, Ventura, Pomona, Corona, Oxnard, Riverside, Piru and Orange.

Employees of the California Fruit Growers Exchange, officials and employees of companies dealing in fresh fruits and utilizing respondent's service, truck drivers formerly employed by respondent, and an employee of the Commission were called as witnesses by the Commission's staff.

The employee of the California Fruit Growers Exchange described its organization, operating and record keeping procedures and the locations of packing houses maintained by orange and lemon growers associated with it. The witness also testified as to the names of consignors and loading points of shipments referred to in Exhibit 4.

A representative of a wholesale produce dealer testified that ordinarily oranges are supplied by one packing house and lemons are provided by a different packing house. The witness stated that subsequent to a purchase of citrus fruits he issued instructions to the carrier as to points where such fruit was to be picked up. An employee of the same produce dealer testified as to the points of origin of shipments of oranges and lemons contained in Exhibit 4, consigned to his company and transported thereto by respondent.

Testimony of truck drivers who transported some of the shipments included in Exhibit 4 indicated that respondent's employe at his Los Angeles terminal issued instructions as to pick up points and that oranges were not picked up at the same packing houses as lemons.

It will serve no useful purpose to here discuss the testimony of such witnesses in detail. It is sufficient to state that this record demonstrates that shipments of oranges and lemons described on 21 invoices forming part of Exhibit 4 had not one, but two points of origin.

A senior transportation rate expert in the employ of the Commission's rate department presented evidence with reference to the data appearing on the invoices contained in Exhibits 4 and 5. Such evidence embraced Exhibit 16, an analysis of 70 shipments of oranges, lemons and grapefruit transported by respondent at various times between March 10, 1950, and September 12, 1950, inclusive. According to this exhibit and the witness' testimony, respondent violated the established minimum rates by:

1. Improperly consolidating or combining separate shipments in contravention of the provisions of Item 50 of Highway Carriers' <sup>(1)</sup> Tariff No. 8.

2. Applying purported rail rates but failing to:

(a) Assess charges equivalent to non-competitive railroad switching charges of the delivering rail carrier.

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(1) Item 50 provides as follows: "Each shipment shall be rated separately. Shipments shall not be consolidated nor combined by the carrier. Component parts of split pick up or split delivery shipments, as defined in Item No. 11 series, may be combined under the provisions of Items Nos. 170 and 180 series."

(b) Assess charges for transportation from rail team track to point of delivery located off-rail.

3. Applying point-to-point commodity rates to shipments originating at points from which such point-to-point rates were not applicable.

4. Applying rail carload rates to shipments which were not moved under the same limitations and conditions surrounding transportation by rail.

5. Applying rail rates although consignor's place of business was not served by rail spur track facilities.

According to Exhibit 16 various shipping documents were not issued in the manner prescribed by the Commission in that names of consignors and points of origin were omitted, types of service rendered were not described, the commodity description was not furnished, the rate was not shown and points of origin were incorrectly named.

A person in respondent's employ until May, 1951, was called as a witness by the Commission's staff. Her testimony disclosed that her employment in respondent's office began in August, 1948, upon being graduated from high school and business college where she studied bookkeeping, typewriting and clerical work. Her duties included rating the shipments transported by respondent although she had had no previous experience in the field. The witness stated that a copy of Highway Carriers' Tariff No. 8 was available in her office ever since the time she was first employed by respondent. However, she rated all the shipments set forth in Exhibits 4 and 5 using, not Highway Carriers' Tariff No. 8, but a typewritten sheet and a yellow card (in evidence herein as Exhibit 12) entitled "Produce Express, Rates on Citrus Fruits,

Revised, Effective February 28, 1949, to San Francisco, Oakland, San Jose and Intermediate Points", both of which were delivered to her by a woman who preceded her in respondent's employ. According to her testimony she was unfamiliar with the rules and regulations contained in Highway Carriers' Tariff No. 8 pertaining to information required on shipping documents and never examined such tariff in order to ascertain such requirements.

The witness asserted she prepared the invoices from information furnished by the respondent's drivers and that she relied upon such information in order to determine the origin point or points of the shipments involved. She stated that where only one point of origin was indicated she assessed the charges on that basis. She further stated that in rating the shipments, component parts of which emanated from more than one point, she totalled the weight of the various parts, selected the point farthestmost from San Francisco, applied the rate set forth in Exhibit 12 for such a movement and added split pick up charges thereto. In this connection it should be noted that the evidence demonstrates that numerous shipments were not subject to split pick up service because of non-conformity with the provisions of Item 170-B of Highway Carriers' Tariff No. 8.<sup>(2)</sup>

It appears from the witness' testimony that in rating certain shipments consigned to one of the wholesale produce

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(2) Item 170-B provides in part as follows: "The provisions of this item shall not apply; (2) Unless at the time of or prior to the first pickup a single bill of lading or other shipping document shall have been issued for the composite shipment and the carrier shall have been furnished with written instructions showing the name of each consignor, the points of origin and the kind of property in each component part." (Underscoring added).

establishments mentioned above, she accepted and employed rates and charges furnished her by such consignee. No independent examination of the applicability of such charges was made, she said, because it was assumed that they were correct. In like manner she assessed charges for the transportation of shipments to a retail food market upon a weight basis supplied by such consignee.

The witness maintained that she had not made preferential rates available to any of respondent's shippers or attempted to conceal a point of origin where in fact each portion of a shipment was from more than one point of origin nor had respondent ever instructed her so to do.

A rate technician who appeared upon respondent's behalf testified that the lowest legal rate applicable to each of the shipments contained in Exhibit 16 was 39 cents per hundred pounds thus resulting in charges lower than those assessed by respondent and lower than the established minimum charges set forth by the Commission's rate expert on Exhibit 16. It appears from this witness' testimony that he arrived at the 39 cent rate by interpreting Item 200 of Highway Carriers' Tariff No. 8, which provides

"In the event a combination of point-to-point and distance rates provided in this tariff produces a lower aggregate charge for the same transportation than is produced by a through distance rate, such combination of rates may be applied.",

as authorizing the combination of the point to point commodity rates from Los Angeles Territory to San Francisco Territory, as contained in Item 320-C of Highway Carriers' Tariff No. 8, with the exception set forth in Item 40 series which provides in part as follows:

"Exception. - Rates in this tariff do not apply to transportation of:

- (b) Citrus fruits when the point of destination of the shipment is within the Los Angeles Drayage Area, as referred to in Item No. 30 series; . . ."

Such an interpretation would work a tortuous construction of the above quoted tariff provisions and is untenable. In order for the exception contained in Item 40 series to become operative a shipment must be destined to a point within the Los Angeles Drayage Area (as defined in Item 30 series) and there must be tendered for physical delivery into the custody of the consignee or his agent. All but two of the shipments involved in this proceeding originated at points outside of the Los Angeles Drayage Area, and were directed not to points within such area but consigned to and physically delivered at San Francisco and Oakland, with few, if any, of them moving into or through said drayage area during the transportation thereof. In Decision No. 34486, dated August 12, 1941, in Case No. 4293, wherein we provided for such exception, we stated:

"Therefore, we are of the opinion that the existing discrimination should be removed by exempting all markets in the Los Angeles area from the minimum rates, rules and regulations heretofore established on citrus fruits. \* \* \* \* \* It should be understood that this course is taken solely for the purpose of removing discrimination pending the receipt of further testimony and that the rates with necessary modifications if any are to be restored at an early date."  
(Underscoring added)

It is readily apparent therefrom that the exception so established in Item 40 series created not a rate but an absence thereof. Implicit in Item 200 is the requirement that any combination set up pursuant to its provisions, must consist of at least two rates, not an abortive union of a single rate with no rate at all.

The record in this proceeding definitely evidences that respondent has assessed and collected transportation charges lower than are prescribed as minima for the services performed and that there was a material deficiency in the data supplied upon the shipping documents here involved.

We find that in assessing and collecting transportation charges upon the shipments described in this proceeding and in failing to issue shipping documents showing all required information as prescribed by the Commission's Highway Carriers' Tariff No. 8, respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

An order will be entered directing respondent to cease and desist from assessing or collecting lower transportation charges than those prescribed as minima, to collect or take appropriate action to collect, within 20 days after the effective date of this order, the lawful charges on the shipments described in the appendix attached hereto, and to cease and desist from issuing shipping documents in form other than as prescribed by the Commission. A copy of this decision will be served upon each shipper listed in such appendix. In this connection, attention is called to the provisions of the Public Utilities Code with respect to penalties for violations thereof and for aiding and abetting carriers in such violations.

ORDER

Public hearings having been held and based upon the evidence therein adduced,

IT IS ORDERED:

(1) That Walter Alves forthwith cease and desist from:



(a) assessing or collecting less than the minimum rates and charges prescribed by the Commission's Highway Carriers' Tariff No. 8 for any and all transportation performed by him, and

(b) issuing shipping documents in form other than prescribed by the Commission.

(2) That Walter Alves is directed within 20 days after the effective date of this order to:

(a) collect or take appropriate action to collect the amounts indicated upon the appendix attached hereto, and

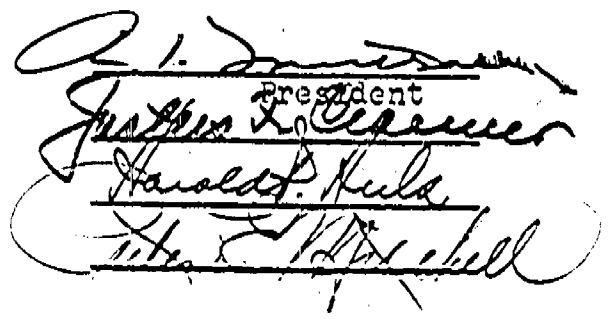
(b) notify the Commission in writing upon the consummation of said collections.

(3) That in the event respondent is unable to collect all of the charges as required in paragraph (2) hereof, he shall submit to the Commission on Monday of each week, until all of said charges are collected or unless otherwise ordered herein, a report specifying the action taken to collect said charges and the results of said action.

The Secretary is directed to cause a certified copy of this decision to be served personally upon the respondent, and by registered mail upon each of the shippers listed in the appendix hereto.

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

Dated at San Francisco, California, this 17<sup>th</sup> day of March, 1952.

  
President  
Commissioners

APPENDIX

<u>Shipping Document Number</u>	<u>Consignee</u>	<u>Applicable Charges</u>	<u>Amount Collected</u>	<u>Amount to be Collected</u>
13437	A. Levy & J. Zentner & Co., 3rd & Franklin St., Oakland	\$ 201.88	\$ 166.53	\$ 35.35
13893	G. Bonora & Co., 420 Franklin St., Oakland	201.96	174.26	27.70
14060	"	194.06	182.14	11.82
14106	"	225.02	174.82	50.20
14880	"	127.92	119.71	8.21
14823	"	217.88	192.15	25.73
15056	"	205.58	190.47	15.11
15125	"	231.48	180.10	51.38
15834	"	192.75	161.90	30.85
15903	"	244.35	210.52	33.83
16219	"	206.60	177.15	29.45
16792	"	267.38	220.52	46.86
16789	"	201.56	189.08	12.48
16872	"	123.04	105.97	17.07
16859	"	241.21	204.15	37.09
17172	"	232.77	226.39	6.38
17426	"	242.79	233.30	9.49
17476	"	234.16	192.32	41.84
14304	Central California Producers, 380-3rd St., Oakland	189.69	144.12	44.57
14330	"	192.02	185.12	6.90
15072	"	209.15	177.60	31.55
15115	"	207.88	180.88	27.00
15178	"	213.97	177.80	36.17
15244	"	196.85	170.60	26.25
15899	"	322.06	267.21	54.85
17407	"	198.12	145.44	52.68
17405	"	212.49	190.37	22.12
17406	"	211.87	184.78	27.09
17404	"	250.04	187.94	62.10
16841	"	187.70	149.99	37.71
17399	"	192.90	134.79	58.11
17401	"	168.92	163.59	5.33
17398	"	174.49	166.90	7.59
17397	"	160.57	145.34	15.23
17403	"	189.92	183.28	6.64
17400	"	184.59	156.94	7.65
17366	"	142.09	137.28	4.81
14983	Sun Valley Produce Co., 370-2nd St., Oakland	187.19	157.09	30.10
14984	"	120.00	150.42	29.58
15227	"	205.07	151.22	53.85
15141	"	234.27	188.40	45.87
15663	"	231.48	207.46	24.02
15984	"	152.41	141.78	10.63
16791	"	194.68	182.04	12.64
16788	"	207.81	201.28	6.53
16615	"	158.89	147.80	11.09
16793	"	284.90	204.16	80.74
16684	"	164.48	153.00	11.48
16864	"	211.82	187.92	23.90
17280	"	188.21	168.28	19.93

APPENDIX (Contd)

<u>Shipping Document Number</u>	<u>Consignee</u>	<u>Applicable Charges</u>	<u>Amount Collected</u>	<u>Amount to be Collected</u>
15219	Scatena-Galli Fruit Co., 104 Washington St., San Francisco	\$ 267.71	\$ 226.08	\$ 41.63
15194	"	164.48	153.00	11.48
15272	"	164.48	153.00	11.48
15850	"	227.56	201.37	26.19
15667	"	164.48	153.00	11.48
15737	"	164.48	153.00	11.48
15764	"	164.48	153.00	11.48
16122	"	252.18	230.95	21.23
16123	"	164.48	153.00	11.48
16275	"	137.07	127.50	9.57
16935	"	216.58	196.95	19.63
16993	"	137.07	127.50	9.57
17249	"	178.03	138.57	39.46
17294	"	117.30	102.00	15.30
17346	"	157.32	119.93	37.39
16923	Lucky Stores, Inc., 1701 First Ave., San Leandro	200.49	182.20	18.29