

Decision No. 4746S

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,
rates and practices of W. D. Nichols,
sometimes known as Wilfred D. Nichols,
doing business as W. D. Nichols
Trucking Company, and into the opera-
tions, rates and practices of F. J.
Heidlebaugh, sometimes known as
Franklin J. Heidelbaugh, doing busi-
ness as Heidelbaugh Transportation
Company.

Case No. 5342

Halsey L. Rixford, for the Public Utilities Commission
of the State of California.

David Lyons, for Wilfred D. Nichols and F. J. Heidelbaugh,
respondents.

O P I N I O N

The Commission instituted an investigation on its own motion into the operations, rates and practices of Wilfred D. Nichols, doing business as W. D. Nichols Trucking Company, and F. J. Heidelbaugh, doing business as Heidelbaugh Transportation Company, for the purpose of determining whether they, or either of them, had violated any of the provisions of the City Carriers' Act (California Statutes 1935, Ch. 312, as amended), now Ch. 2 of Division 2 of the Public Utilities Code, Sections 3901-4149, in performing transportation services within the City of Los Angeles for the Colton Construction Engineering Co. and/or the Guy F. Atkinson Company.

A public hearing was held before Examiner Chiesa. Oral and documentary evidence having been adduced and considered, the Commission makes the following findings of fact and conclusions of law:

The Grand Avenue Job

Findings of Fact:

1. That respondents Wilfred D. Nichols and F. J. Heidlebaugh, at all times material herein and hereinafter mentioned, individually, were authorized permitted carriers, Wilfred D. Nichols being the holder of Radial Highway Common Carrier permit No. 19-36484, City Carrier permit No. 19-36485 up to and including February 6, 1951, and thereafter City Carrier permit No. 19-39661, F. J. Heidlebaugh being the holder of Radial Highway Common Carrier permit No. 19-36509, Highway Contract Carrier permit No. 19-37157, City Carrier permit No. 19-36510 up to and including January 30, 1951, and thereafter City Carrier permit No. 19-39681.
2. That on October 27, 1949, said respondents Wilfred D. Nichols and F. J. Heidlebaugh, as a joint venture, entered into a written agreement with Colton Construction Engineering Co., a co-partnership, whereby said respondents jointly agreed to haul or transport approximately 80,000 cubic yards of dirt, debris, and concrete, from 450 North Grand Avenue in the City of Los Angeles to a dump located at 3906 Mission Road, also in said City, a distance of 3.4 miles, for a consideration of \$28,000.
3. That Colton Construction Engineering Co. did not at any time notify respondents, or either of them, in writing or otherwise, that it intended to ship at hourly rates as provided in City Carriers' Tariff No. 6, Section No. 4, Item No. 300-A.
4. That pursuant to said agreement, hauling was commenced in November 1949 and was completed in the latter part of February or first part of March 1951 and that in the performance of the agreed transportation service said respondents transported a total of 79,264 cubic yards of earth, having moved 53,868 cubic yards in their own equipment and an additional 3,628 loads, averaging

seven cubic yards per load, or 25,396 cubic yards, transported by subhaulers hired by said respondents, for which service respondents received from Colton Construction Engineering Co. the sum of \$28,000.

5. That the shipments transported by respondents and their subhaulers were not weighed and were not shipped at hourly rates pursuant to any request on the part of the shipper as provided by City Carriers' Tariff No. 6.

6. That in performing the transportation service pursuant to said contract, respondents did not apply the units of measurement nor assess the proper rate and/or charge as required by City Carriers' Tariff No. 6, the applicable tariff for said transportation service.

7. That respondents paid their subhaulers on the basis of hourly rates.

8. That respondents failed to issue, retain or preserve shipping documents as required in Item No. 93 of said City Carriers' Tariff No. 6.

Conclusions of Law:

1. That the proper transportation charge should have been computed upon the basis of an estimated weight of 2,800 pounds per cubic yard, at 37 cents per 2,000 pound ton, for a distance of over three miles but not over four miles, as provided in City Carriers' Tariff No. 6, Items Nos. 10-B(1), 47-A, 60-A and 130-F, or a charge of \$41,058.75.

2. That payments to the underlying carriers or subhaulers should have been computed in the manner and upon the Distance Rates as prescribed in said City Carriers' Tariff No. 6, Section No. 2, Items Nos. 94 and 130-F, then in effect.

3. That respondents F. J. Heidlebaugh and W. D. Nichols, in the performance of the transportation service for Colton Construction Engineering Co., as hereinabove set forth, violated the provisions of City Carriers' Tariff No. 6, particularly Items Nos. 10-B(1), 47-A, 60-A, 93, 94, and 130-F, and Section 4013 of the Public Utilities Code.

The Broadway Tunnel Job

Findings of Fact:

1. That respondents Wilfred D. Nichols and F. J. Heidlebaugh, at all times material herein and hereinafter mentioned, individually, were authorized permitted carriers, Wilfred D. Nichols being the holder of Radial Highway Common Carrier permit No. 19-36484, City Carrier permit No. 19-36485 up to and including February 6, 1951, and thereafter City Carrier permit No. 19-39661, F. J. Heidlebaugh being the holder of Radial Highway Common Carrier permit No. 19-36509, Highway Contract Carrier permit No. 19-37157, City Carrier permit No. 19-36510 up to and including January 30, 1951, and thereafter City Carrier permit No. 19-39681.

2. That on or about December 31, 1949, respondent F. J. Heidlebaugh, doing business as Heidlebaugh Transportation Company, entered into an agreement with Guy F. Atkinson Company, a corporation, whereby said F. J. Heidlebaugh agreed to haul or transport earth or dirt from the vicinity of the Broadway Tunnel (between Temple Street and Sunset Boulevard), in the City of Los Angeles, to a dump located on Bishop Road, also in said City, a distance of approximately 1.8 miles, for a consideration of 28 cents per cubic yard, payment to be made on the basis of cross-sectioned volume in the cut. That said agreement was reduced to writing on or about January 11, 1950 and that on March 17, 1950, the parties to said

contract agreed in writing to change the original price per cubic yard from 28 cents to 30.7 cents.

3. That Guy F. Atkinson Company did not at any time notify F. J. Heidlebaugh in writing or otherwise that it intended to ship at hourly rates as provided in City Carriers' Tariff No. 6, Section No. 4, Item No. 300-A.

4. That pursuant to said agreement, hauling was commenced on or about January 3, 1950 and completed on or about January 30, 1950, and that, in performing said transportation service, respondent F. J. Heidlebaugh transported a total of 6,888 loads of earth in 8 to 9 ton capacity trucks and 730 loads in 16 to 18 ton capacity trucks. That the former trucks averaged 7 cubic yards per load and the latter trucks averaged 16 cubic yards per load, or a total of 59,896 cubic yards. That of the said total number of loads and cubic yards, F. J. Heidlebaugh transported in his own equipment 730 loads in 16 to 18 ton capacity trucks, or 11,680 cubic yards, and 640 loads in 8 to 9 ton capacity trucks or 4,480 cubic yards, or a total of 14,700 cubic yards. That subhaulers hired by said F. J. Heidlebaugh transported a total of 6,248 loads in 8 to 9 ton capacity trucks or 43,736 cubic yards.

5. That for said transportation service, respondent F. J. Heidlebaugh received from Guy F. Atkinson Company the sum of \$14,643.90.

6. That the shipments transported by respondent and his subhaulers were not weighed and were not shipped at hourly rates pursuant to any request on the part of the shipper, as provided in City Carriers' Tariff No. 6.

7. That in performing the transportation service pursuant to said contract, respondent F. J. Heidlebaugh did not apply the units of measurement nor assess the proper rate and/or charge as provided

in City Carriers' Tariff No. 6, the applicable tariff for said transportation service.

8. That F. J. Heidlebaugh paid his subhaulers on the basis of hourly rates.

9. That W. D. Nichols, in the performance of his transportation service on the Broadway Tunnel job, acted as an underlying carrier or subhauler for respondent F. J. Heidlebaugh.

10. That F. J. Heidlebaugh failed to issue, retain or preserve shipping documents as required by City Carriers' Tariff No. 6, Item No. 93.

Conclusions of Law:

1. That the proper transportation charge for said shipments should have been computed upon the basis of an estimated weight of 2,800 pounds per cubic yard, at 26 cents per 2,000 pound ton, for a distance of over one mile but not over two miles, as provided in City Carriers' Tariff No. 6, Items Nos. 10-B(1), 47-A, 60-A, and 130-F, or a charge of \$21,794.14.

2. That payments to the underlying carriers or subhaulers should have been computed in the manner and upon the Distance Rates as prescribed in said City Carriers' Tariff No. 6, Section No. 2, Items Nos. 94 and 130-F, then in effect.

3. That respondent F. J. Heidlebaugh, in the performance of the transportation service for the Guy F. Atkinson Company as hereinabove set forth, violated the provisions of City Carriers' Tariff No. 6, particularly Items Nos. 10-B(1), 47-A, 60-A, 93, 94 and 130-F, and Section 4013 of the Public Utilities Code.

Respondents did not testify in their own behalf nor did they call any witnesses to testify for them. The record shows that they willingly cooperated with representatives of the Commission's staff during the course of the investigation.

It is contended by respondents' attorney that because respondents were called to testify by the Commission's attorney, under Section 2055 of the Code of Civil Procedure, the respondents are entitled to immunity and protection against any penalty or forfeiture by virtue of Section 4081 of the Public Utilities Code. The protection provided in that section applies only where a person is ordered to testify. Respondents were not ordered to testify in this proceeding. Furthermore, we construe the words "penalty or forfeiture" as having no reference to the kind of action ordered herein, viz., the suspension of permits.

O R D E R

A public hearing having been held in the above-entitled proceeding, the matter having been submitted, and the Commission being fully advised in the premises and having made its findings of facts and conclusions of law hereinbefore set forth,

IT IS ORDERED:

(1) That Radial Highway Common Carrier permit No. 19-36509, Highway Contract Carrier permit No. 19-37157 and City Carrier permit No. 19-39681, issued to F. J. Heidlebaugh, doing business as Heidlebaugh Transportation Company, be and the same hereby are suspended for a period of ten (10) days commencing on the effective date of this order.

(2) That Radial Highway Common Carrier permit No. 19-36484 and City Carrier permit No. 19-39661, issued to Wilfred D. Nichols, doing business as W. D. Nichols Trucking Company, be and the same hereby are suspended for a period of ten (10) days commencing on the effective date of this order.

(3) That Wilfred D. Nichols and F. J. Heidlebaugh, within ten (10) days after the effective date of this order, shall assess and collect or take appropriate action to collect from Colton Construction Engineering Co. the difference between the amount collected, to wit, \$28,000, and the amount chargeable under the provisions of City Carriers' Tariff No. 6, to wit, \$41,058.75, being the amount undercharged in the sum of \$13,058.75.

(4) That upon receipt of the collection ordered in the preceding paragraph, Wilfred D. Nichols and F. J. Heidlebaugh shall pay to their underlying carriers or subhaulers the sums due the latter, which sums shall be computed in the manner provided in the Distance Rates as prescribed in said City Carriers' Tariff No. 6, Section No. 2, Items Nos. 94 and 130-F, then in effect.

(5) That Wilfred D. Nichols and F. J. Heidlebaugh, starting in the month immediately following the effective date of this order, shall report to the Commission, on the first and fifteenth days of each month, the amount of the collections received or the action taken to collect the charges as required by paragraph (3) hereof, and the results of said action, and shall also submit a detailed report of payments made to subhaulers.

(6) That F. J. Heidlebaugh, within ten (10) days after the effective date of this order, shall assess and collect or take appropriate action to collect from Guy F. Atkinson Company, a corporation, the difference between the amount collected, to wit, \$14,643.90, and the amount chargeable under the provisions of City Carriers' Tariff No. 6, to wit, \$21,794.14, being the amount undercharged in the sum of \$7,150.24. ✓

(7) That upon receipt of the collection ordered in the preceding paragraph, F. J. Heidlebaugh shall pay to his underlying ✓

carriers or subhaulers the sums due the latter, which sums shall be computed in the manner provided in the Distance Rates as prescribed in said City Carriers' Tariff No. 6, Section No. 2, Items Nos. 94 and 130-F, then in effect.

(8) That F. J. Heidlebaugh, starting in the month immediately following the effective date of this order, shall report to the Commission, on the first and fifteenth days of each month, the amount of the collections received or the action taken to collect the charges as required by paragraph (6) hereof, and the results of said action, and shall also submit a detailed report of payments made to subhaulers.

(9) That Wilfred D. Nichols and F. J. Heidlebaugh, and each of them, shall forthwith cease and desist from assessing or collecting less than the applicable minimum rates and charges prescribed by the Commission's tariffs for any transportation service which the respondents are authorized to perform and the said respondents hereafter shall issue, retain and preserve shipping documents as required by said tariffs.

IT IS FURTHER ORDERED that the Secretary of this Commission cause service of this order to be made upon each of said respondents, F. J. Heidlebaugh and Wilfred D. Nichols.

The effective date of this order shall be twenty (20) days after the date of service upon said respondents.

Dated at San Francisco, California, this 15th day of July, 1952.

[Signature]
President
[Signature]
[Signature]

Commissioners
Commissioner Justus L. Casper, being necessarily absent, did not participate in the disposition of this proceeding.
Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.