

Decision No. 51047**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into)
 the rates, rules, regulations, charges,)
 allowances and practices of all common)
 carriers, highway carriers and city car-)
 riers relating to the transportation of)
 general commodities (commodities for)
 which rates are provided in Highway)
 Carriers' Tariff No. 2).

Case No. 5432
 Petition for Modification
 No. 34

Edward M. Berol and Lewis Clark, for California
 Government Traffic Conference, petitioner.

J. C. Kaspar, for Motor Truck Association; L. E.
 Osborne, for California Manufacturers' Association;
Arlo D. Poe, for Motor Truck Association of
 California; T. A. L. Loretz, Tariff Agent; J. L.
 Beeler, for Southwestern Motor Tariff Bureau;
Maurice A. Owens, for Draymens Association of
 Alameda County, Pacific Motor Tariff Bureau;
H. L. Mathewson, for Pacific States Motor Tariff
 Bureau; A. F. Schumacher and P. N. Kujachich,
 for Owens-Illinois Glass Co., Pacific Coast
 Division; Jess E. Francis, for Continental
 Freight Lines; C. R. Nickerson, for Pacific Coast
 Tariff Bureau; Harry Marioneaux, for Alves Service
 Transportation Co., All-State Transportation Co.,
 and J. A. Nevis Trucking, Inc.; Graeme Pexton, for
 Constructors Transport Co.; Harold F. Culy, for
 Culy Transportation Co., Inc.; E. J. Muzio, for
 Miles & Sons Trucking Service and Miles Motor
 Transport System; John W. Smith, for Southern
 Pacific Company and Pacific Motor Trucking Company;
James E. Doyle, for Doyle Draying Co.; W. J. Pope,
 for Aetna Freight Lines; Peter Vinick, for Lodi
 Truck Service and Walter Alves, for All-State
 Transportation Co., Inc.; and Alves Service
 Transportation Inc., interested parties.

Clement T. Mayo, Commerce Counsel, Bureau of Supplies
 and Accounts, Department of the Navy, for the
 Department of Defense.

J. A. McCunniff, of the Commission's staff.

O P I N I O N

On June 3, 1954, petitioner California Government Traffic Conference filed Petition for Modification No. 34 in Case No. 5432 seeking to eliminate from Item No. 20 Series of Highway Carriers' Tariff No. 2 (now Minimum Rate Tariff No. 2) the paragraph reading as follows:

"Radial highway common carriers, highway contract carriers and household goods carriers may deviate from the minimum rates named in this tariff in connection with the transportation of property for the armed forces of the United States."

On June 17, 1954, said petition was amended to provide that instead of eliminating the above-quoted paragraph it be amended to read as follows:

"Radial highway common carriers, highway contract carriers and household goods carriers may deviate from the minimum rates named in this tariff in connection with the transportation of property for the armed forces of the United States, to the extent necessary to meet the rate of a common carrier on file for use with the armed forces of the United States, pursuant to Section 530 of the Public Utilities Code."

(Underscored portion constitutes addition.)

Public hearings were held before Examiner Wilson E. Cline at San Francisco on November 3, 4 and 5, 1954. The matter was taken under submission upon the filing of certain exhibits November 12, 1954.

California Government Traffic Conference is an association of all classes of highway carriers engaged in the transportation of property for the armed forces of the United States. Exhibit No. 13 lists its members as follows:

Aetna Freight Lines, Anaheim Truck & Transfer Co., Arrowhead Freight Lines, Ltd., Asbury Transportation Co., Bigge Drayage Co., California Cartage Company, Inc., Citizens Transportation Company, City Messenger Air Express Co., Coast Counties Express, Constructors Transport Co., Continental Freight Lines, Delta Lines, Inc., Doyle Draying Co., Empire Transportation Company, Fortier Transportation Company, Chas. P. Hart Transportation, Lodi Truck Service, Miles & Sons Trucking Service, Miles

Motor Transport System, Northern Transportation Co., Oregon Nevada California Fast Freight, Inc., Orr Tank Lines, Pacific Freight Lines, Paxton Truck Co., Sacramento Freight Lines, Inc., Sullivan Transportation Co., Valley Motor Lines, Inc., Ventura Transfer Co., Victorville-Barstow Truck Lines, Warren Transportation Company and Western Transportation Company.

The paragraph in Item No. 20 Series of Minimum Rate Tariff No. 2 which petitioner is requesting to be modified was incorporated in said Item No. 20 Series by Decision No. 42031, dated September 14, 1948, in Case No. 4808. In said Decision, 48 Cal.P.U.C. 237,239, the Commission stated:

"From the evidence of record it is apparent that radial highway common, highway contract and city carriers are disadvantaged by the statutory privileges accorded only to common carriers in the transportation of government traffic. An equal opportunity to compete freely from a minimum rate standpoint for the movement of competitive government shipments should be accorded all classes of carriers."

As justification for the proposed modification petitioner alleged in the amended petition herein:

"Certain permit carriers have taken liberal and literal advantage of the * * * equal opportunity to compete freely from a minimum rate standpoint for the movement of competitive government shipments * * * . In doing so they have driven rates for the handling of such government shipments to a depressed and unreasonably low and unlawful level. Your petitioner is informed and believes, and upon such information and belief alleges, that the government is the largest single shipper of commodities moving between points in the State of California. That carriers handling such traffic at unduly low and depressed rates are creating chaotic transportation conditions in the movement of such goods. That such practices are having a depressing influence upon the revenues of the carriers, and if they continue can only result in creating a burden upon other traffic. That the public interest and the preservation of a sound minimum rate structure requires that such practices be stopped and that the privilege accorded by Decision No. 42031 be discontinued."

In support of certain of these allegations, petitioner introduced evidence through various carrier and tariff agent witnesses.

The record does not show that the rates of any of the permit carriers for the handling of government shipments are unlawful, but it

does support a finding that certain permit carriers have driven rates for the handling of such shipments to a depressed and unreasonably low level, thereby creating chaotic transportation conditions in the movement of such goods. Such depressed and unreasonably low rates for government traffic are depressing the revenues of the carriers now and previously engaged in handling such traffic and if continued will create a burden upon other traffic.

No evidence was introduced to show that the government is the largest single shipper of commodities moving between points in California, but the record does show that the volume of this traffic is very substantial.

The record further shows that various common carriers and permitted carriers represented at the hearing are willing to continue to offer to the government the freight (all kinds) rates in accordance with the formula arrived at through negotiation between the representatives of the government and the carriers.

The Commission staff witness made a brief statement respecting the administrative significance of petitioner's proposal. He pointed out that the Commission has previously held in Decision No. 20328, dated October 15, 1928, 32 CRC 296,307, that common carriers are not required to file with this Commission rates quoted under Section 530 of the Public Utilities Code for transportation for the United States, state, county, or municipal governments. In the absence of a filing of such quotations with this Commission practical difficulties will be experienced both by the Commission and its staff and the carriers and the public in ascertaining those quotations which are below the level of the minimum rates otherwise established in Minimum Rate Tariff No. 2.

The Commission staff witness also pointed out a further difficulty. The proposal of the petitioner would place a restriction

on the ability of highway permit carriers to initiate lower rates thus leaving the entire initiative to the common carriers. In those instances where closed bids were filed with the government a common carrier could bid below the established minimum rate whereas a highway permit carrier could not safely do so.

In order to meet the administrative problems posed by the Commission staff witness, petitioner suggested (1) that common carriers be required to file copies of their rate quotations governing the transportation of the property for the armed forces of the United States in the same manner that is specified in Tariff Circular No. 2 and General Order No. 80, and (2) that permit carriers be required to show on their freight bills the source of any rate extended to the armed forces which is below that specified in Minimum Rate Tariff No. 2.

The record shows that the armed forces are required to ship goods via the carriers which offer them the lowest rates. Where several carriers offer the same rates the business is allocated among them on an equitable basis after a review of the schedule of facilities listed by each of the carriers.

Clement T. Mayo, Commerce Counsel representing the Department of Defense, stated the position of Department of Defense as follows:

"Our position as stated in the opening of the proceeding is that we are appearing as our interests may appear. We are not, based on the evidence that has gone in so far, opposed to the petition as it now stands. We certainly will be opposed to the petition as it was originally filed. Our position in these proceedings and the position we have taken through all the proceedings that we have been in in rate matters is that the Department of Defense is in agreement with the National Transportation Policy as declared by the Congress of the United States and is in favor of reasonable rates on a stabilized basis, and of a sound transportation system to meet the needs of commerce in the national defense. Healthy competition is the life of trade and desirable, particularly in the

transportation field. But unethical competition can be extremely detrimental to the industry and can seriously hamper the type of transportation service that is imperative to the defense of our nation and for the waging of war. The Department of Defense seeks rates and rate adjustments only after a thorough analysis of the rate-making factors surrounding the particular transportation involved and after it determines that the existing rates are excessive based on sound rate-making principles and the circumstances of the instant case * * * "

Witness Alves who is president of Alves Service Transportation, Inc., and All-State Transportation, two of the carriers whose volume of governmental traffic has recently been increased by reason of the lowering of rates, stated that he thought the modification of Item No. 20 Series as proposed would be a very fine thing providing there was enough competition in the common carrier field to serve the military bases. Mr. Marioneaux engaged in extensive cross-examination of petitioner's witnesses throughout the hearing and at the conclusion stated that that he concurred basically in Mr. Alves' statement. He further stated that he was fully in accord with some corrective measure that would establish minimum rate charges for government traffic as well as for commercial traffic but that he did not believe that the granting of the petition was the proper manner in which to achieve such objective. Mr. Marioneaux suggested that the Commission give this matter further study particularly with respect to assuring the government that there will be a multiplicity of common carriers serving the routes over which military freight is transported.

All other carrier participants in the proceeding, the tariff agents, the California Manufacturers' Association and the Los Angeles Chamber of Commerce were in favor of the modification of Item No. 20 Series as proposed.

The record shows that in those cases where closed bids are sought from carriers and a contract for transportation is awarded by the government to the low bidder it would be manifestly unfair not to

allow permit carriers to bid for the business on the same basis as common carriers. If notice of quotations filed by common carriers with the armed forces is given to permit carriers through the filing of such quotations with this Commission prior to their effective date, the permit carriers can compete on an equal basis with the common carriers without the necessity of their being authorized to initiate quotations below the minimum rates specified in Minimum Rate Tariff No. 2. The manner in which quotations from carriers are sought by the armed forces is a matter within the discretion of the armed forces, however.

We hereby find that radial highway common carriers, highway contract carriers and household goods carriers should be permitted to deviate from the minimum rates specified in Minimum Rate Tariff No. 2 only to the extent necessary to meet a lower common carrier quotation to the armed forces of the United States providing said armed forces give notice to this Commission that they require common carriers to file such quotations with this Commission prior to their becoming effective. Otherwise there should be no limitation on the right of such permit carriers to deviate from said minimum rates in connection with transportation of property for the armed forces of the United States. There is nothing in this record to indicate whether the armed forces of the United States will require common carriers to file such quotations with this Commission and in the absence of such showing we will not at this time revise the third paragraph of Item 20 Series.

However, upon the filing of a supplemental petition for modification herein by the California Government Traffic Conference stating that the armed forces of the United States propose to require common carriers to file with this Commission quotations for the intrastate carriage within California of property for the armed forces of the United States and attaching to said supplemental petition a written statement from the armed forces of the United States expressing such

intention, this Commission will issue a supplementary order hereto revising the third paragraph of Item 20 Series to read as set forth in Appendix "A" attached hereto.

O R D E R

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

IT IS HEREBY ORDERED:

1. That at any time within six months from the date hereof petitioner California Government Traffic Conference may file a supplemental petition for modification pursuant to the views and suggestions set out in the above opinion, whereupon this Commission will issue a supplemental order herein revising the third paragraph of Item 20 Series of Minimum Rate Tariff No. 2 to read as set forth in Appendix "A" attached hereto and made a part hereof.

2. In the event such supplemental petition for modification is not filed within six months from the date hereof, that Petition for Modification No. 34 be denied without further order of this Commission.

This order shall become effective twenty days after the date hereof.

Dated at Los Angeles, California, this 25th day of JANUARY, 1955.

Ed. E. Mitchell
President
Justus J. Caswell
Paul J. Tuttle
William J. Dooly
Commissioners

APPENDIX "A"

(Revised Paragraph 3 of Item 20 Series
Minimum Rate Tariff No. 2)

Radial highway common carriers, highway contract carriers and household goods carriers may deviate from the minimum rates named in this tariff in connection with the transportation of property for the armed forces of the United States only to the extent necessary to meet a lower rate of a common carrier for the transportation of said property providing the armed forces of the United States notify this Commission in writing that common carriers are required by them to file such common carrier rates with this Commission in a form acceptable to the Commission, and generally in conformance with the provisions of Tariff Circular No. 2 and General Order No. 80 governing the construction and filing of common carrier tariffs. Radial highway common carriers, highway contract carriers and household goods carriers deviating from the minimum rates named in this tariff pursuant to this paragraph shall make reference on their bills of lading to the common carrier rates on file with this Commission which constitute the authority for such deviation.

In the event the armed forces of the United States do not notify this Commission in writing that common carriers are so required to file such rates with this Commission or revoke any such notice previously given, radial highway common carriers, highway contract carriers and household goods carriers may deviate without limitation from the minimum rates named in this tariff in connection with the transportation of property for the armed forces of the United States.