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Decision No. 53234 **ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of CROW TRANSPORTATION COMPANY.	)	Case No. 5669

Harold J. McCarthy for the Commission staff.
Arlo D. Poe for respondent, and also for California Trucking Associations, Inc., an interested party; S. C. Houts and L. C. Monroe for Union Oil Company of California; L. E. Osborne for California Manufacturers' Association; Paul H. Moore for General Petroleum Corporation; W. H. Adams and M. S. Housner for Shell Oil Company; Brian Pierce for J. E. Hale and Standard Oil Company; Walter Bousfield for J. M. Connors and Tidewater Associated Oil Company; W. Y. Bell and A. F. Patton for the Richfield Oil Company; Sid B. Levine for H. Levine Cooperage; Donald E. Cantlay for Western Truck Lines, Ltd.; and A. P. Davis, Jr., for Carnation Company; interested parties.

O P I N I O N

The Commission instituted this investigation on its own motion into the operations, rates and practices of Windsor O. Crow and Ellis J. Hunter, doing business as Crow Transportation Company, a copartnership, for the purpose of determining whether said copartnership has violated or is violating Sections 3664, 3667 and 3737 of the Public Utilities Code (California Statutes 1951, Chapter 764, as amended), or any of said sections, in assessing or collecting charges less than the minimum charges, as prescribed by this Commission in its Minimum Rate Tariff No. 2, for the transportation of iron barrels, empty, second-hand, returned to a point other than the point of origin of the outbound loaded movement.

A public hearing was held on January 25, 1956, in Los Angeles, before Examiner Mark V. Chiesa. Oral and documentary evidence having been adduced, the matter was submitted for decision.

The facts are not in dispute, as they were stipulated by counsel representing this Commission's staff and counsel representing the respondent, Crow Transportation Company.

This proceeding involves a return shipment of 36 iron barrels, second-hand, empty, having a weight of 1,836 pounds. Said return shipment was consigned on January 5, 1954, by the Union Oil Company of California, from Ventura, California, to the Union Oil Company of California, destination H. Levine Cooperage, at 5400 Soto Street, Los Angeles, California. The carrier was Crow Transportation Company (the respondent herein) which charged and was paid the sum of $8.20, being the total charge at the rate of 41 cents per hundred pounds, 1,836 pounds as 2,000 pounds, which is 1/2 of 4th class rate for the 78.5 constructive miles as per Distance Table No. 4.

The original or outbound movement of said barrels, filled, was from the Union Oil Company of California, at its plant at 6th and Mateo Streets in the City of Los Angeles, to the Union Oil Company of California, at Ventura, California. The carrier was the respondent herein.

The position of the Commission's staff is that as the shipment from Ventura was not returned to "the precise location"1/

1/ Item 10-J (g) of the Minimum Rate Tariff No. 2 defines Point of Origin as follows:
"POINT OF ORIGIN means the precise location at which property is physically delivered by the consignor or his agent into the custody of the carrier for transportation. All points within a single industrial plant or shipping area of one consignor shall be considered as one point of origin. An industrial plant or shipping area of one consignor shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare."

at which the said barrels were delivered to the carrier for the original or outbound shipment, at 6th and Mateo Streets in the City of Los Angeles, the proper charge was not assessed and that the carrier should have charged and collected, for the Ventura to Los Angeles shipment, $19.00, being the charge at the rate of 95 cents per hundred pounds, for the same minimum weight of 2,000 pounds and 78.5 miles distance, which is the applicable 3rd class less carload rate on old or used shipping barrels under the Minimum Rate Tariff No. 2. The staff contends that, in the event of a conflict or uncertainty as to the application of a rule or regulation in the Western Classification or Exception Sheet, the Commission, by reason of Item 50-B (b)[2/] may properly apply the meaning of "point of origin" as defined in the tariff.

The position of the respondent is that the proper rate was charged under the Minimum Rate Tariff No. 2 and Exception Sheet No. 1-S; that the Exception Sheet contains no rule or requirement that a return movement must be delivered to the "precise location" at which the original or outbound shipment was picked up;[3/] that Item 10-J (g) is not applicable to this return movement, which is

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2/ Item 50-B (b) provides as follows:
"Where the ratings, rules and regulations or other provisions or conditions provided in the Western Classification or Exception Sheet are in conflict with those provided in this tariff, the provisions of this tariff will apply."

3/ The Exception Sheet provides, in part, as follows:
"Note 1. - Applies only on carriers (used packages), second-hand, empty, returning, or when shipped for return paying load, applies only when return movement is over same line or lines, as outbound movement ... subject to Rule 180 ..."

That portion of Rule 180 of Exception Sheet 1-S which is applicable to this return shipment reads as follows:
"(a) Empty Packages or Carriers second-hand, empty, returned: The Agent must satisfy himself that such packages were moved filled and are being returned over the same line or lines to consignor of the original filled package." (emphasis added)

governed by Item 300 Series, Rule 180, in the said Exception Sheet; and that Crow Transportation Company applied the proper rate of one-half of fourth class as per Item No. 330-E of Minimum Rate Tariff No. 2 and Exception Sheet No. 1-S.

We are of the opinion that Rule 180 of Exception Sheet 1-S does not conflict with Item 10-J (g) of the Minimum Rate Tariff No. 2 as the latter definition pertains to shipments as defined by Item 11-E (k).[4/] A shipment is completed when it arrives and is delivered at its destination. In the present case the outbound shipment was from 6th and Mateo Streets, the point of origin, and terminated at Ventura. The return shipment from Ventura destined to 5400 Soto Street, Los Angeles, was a complete shipment in itself and not part of an incompleted shipment which originated at Los Angeles. The point of origin of the return shipment was Ventura. However, the Commission nevertheless must find against the respondent because we are of the opinion that a return shipment must come back to the same place, which we construe to be the origin point which in the instant case we find to be the Union Oil Company's plant situated at 6th and Mateo Streets in the City of Los Angeles. (emphasis added)

The Minimum Rate Tariff No. 2 does not define "point of return", but Rule 180 of the Exception Sheet describes the movement, necessary to the application of the rule, as being one that is returned over the same line to consignor of the original filled package. (emphasis added)

4/ Item 11-E (k) defines shipment as follows:
"SHIPMENT means a quantity of freight tendered by one shipper on one shipping document at one point of origin at one time for one consignee at one point of destination." (emphasis added)

Webster's New International Dictionary, Second Edition, defines the word "return", in part, as follows:

> "Act of returning something or sending or bringing it back to the same place ..." (emphasis added)

We cannot find that the shipment from Ventura to 5400 Soto Street, Los Angeles, was a "returned" shipment, as the filled barrels were shipped from 6th and Mateo Streets, Los Angeles. If we were to hold otherwise, there would be no limit to the places where returning shipments could be delivered, and in a city with extensive boundaries, such as Los Angeles, a loose application of said rule could result in practices detrimental to the shippers and carriers alike.

Several witnesses representing major oil companies testified to the effect that similar return shipments, billed as the one herein being considered, i.e., consigned to a place other than the precise point of origin of the outbound shipment, are frequently made and are customary, and that the rating charge for such shipments has not heretofore been questioned. Although the evidence may justify some condonation, the practice nevertheless is one which we believe is in violation of the provisions of the tariff and the Public Utilities Code.

The Commission further finds that respondent did not assess or collect the proper charge for the shipment of the said barrels from Ventura to Los Angeles; that the correct charge is $19.00, based on 95 cents per hundred pounds, for a minimum weight of 2,000 pounds and 78.5 constructive miles which is the 3rd class less carload rate; that respondent Crow Transportation Company has violated the provisions of the Minimum Rate Tariff No. 2 and Sections 3664, 3667 and 3737 of the Public Utilities Code (California Statutes 1951, Chapter 764, as amended).

After presentation of the Commission's evidence, respondent's attorney moved for a dismissal of the proceedings on the ground that the staff's evidence did not show any violation of any of the provisions of Minimum Rate Tariff No. 2. We are unable to concur with this view and said motion, accordingly, is hereby denied.

O R D E R

A public hearing having been held in the above-entitled matter, the Commission being fully advised in the premises and having found facts as above set forth,

IT IS ORDERED:

(1) That Windsor O. Crow and Ellis J. Hunter, doing business as Crow Transportation Company, a copartnership, within ten days after the effective date of this order, shall assess and collect, or take appropriate action to collect, from Union Oil Company of California the difference between the amount collected, to wit, $8.20, and the amount chargeable under the provisions of Minimum Rate Tariff No. 2, to wit, $19.00, being the amount undercharged in the sum of $10.80.

(2) That Windsor O. Crow and Ellis J. Hunter, doing business as Crow Transportation Company, a copartnership, 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.

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IT IS FURTHER ORDERED that the Secretary of this Commission cause service of this order to be made upon each of said respondents, Windsor O. Crow and Ellis J. Hunter.

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

Dated at San Francisco, California, this 12th day of June, 1956.

Peter E. Mitchell
President

Justus F. Craemer

Ray E. Untereiner

[illegible]

Rex Hardy

Commissioners