

ORIGINAL

Decision No. 54423

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations, rates and
practices of Kings County Truck Lines,
a California corporation.

Case No. 5878

Edward M. Berol and Orville A. Schulenberg,
for respondent.
Mary Moran Pajalich for the Commission staff.

O P I N I O N

On January 15, 1957, the Commission issued an order instituting investigation into the operations, rates and practices of Kings County Truck Lines, a corporation, the hereinabove named respondent. Particular reference was made to alleged misapplication of Items 345 and 347 of respondent's Tariff No. 1 and Items 32 and 70 of respondent's Tariff 1-A which items relate to the rating of separate shipments and shipments transported in multiple lots.

A public hearing was held before Commissioner Hardy and Examiner Cole at San Francisco on January 24, 1957, at which time and place the matter was submitted and is now ready for decision.

Respondent is a highway common carrier having been granted certificates of public convenience and necessity by decisions of the Commission.^{1/} By virtue of these certificates respondent is authorized to transport general commodities, with certain exceptions, between the Los Angeles territory, the San Francisco territory, Sacramento, Stockton, Gilroy, Grass Valley, Auburn and various other points. Respondent has also been issued a radial highway common carrier permit, a highway contract carrier permit, and a city carrier permit.

^{1/} Decision No. 49412 in Application No. 34820, dated December 8, 1953; Decision No. 51529 in Application No. 35023, dated May 31, 1955.

At the time of the hearing, counsel for the respondent and counsel for the Commission staff entered into and filed with the Commission a written stipulation of facts pertaining to the matter under investigation. In essence this stipulation shows that on twenty different occasions covering the period from June, 1956 through November, 1956, respondent failed to rate separately various separate shipments of property as required by Item 345 of respondent's Tariff No. 1 and Item 70 of respondent's Tariff 1-A and that such failure resulted in charges being assessed for the transportation of the shipments in question, which were different from and lower than those required by respondent's applicable tariff rates and rules then in effect. The written stipulation further showed the amount charged and collected by respondent on each of the twenty occasions in question. These amounts totaled \$3,994.54. The stipulation also showed the amount that constituted the proper transportation charge on each occasion. These amounts totaled \$5,599.28. The total amount of the undercharge is \$1,604.74.

Respondent and the Commission staff, in the written stipulation, waived the 10 days' notice of hearing prescribed by Rule 43 of the Commission's Rules of Procedure and required in the Order Instituting Investigation herein.

At the time of the hearing it was orally stipulated that the only commodities hauled by the respondent on the twenty occasions in question were butter, dried milk powder, and medium heat powder. It was testified that medium heat powder is a form of milk powder.

The evidence offered by the Commission staff was limited to the presentation of these stipulations.

One of respondent's employees testified in its behalf. He testified that all of the violations shown in the written stipulation

occurred because of the carelessness and negligence of respondent's employees and not because of a deliberate intent on the part of respondent to violate, or to suffer or permit a violation of, its applicable tariff rates and rules. He further testified that when the violations had been called to respondent's attention, prompt action was taken to correct the respective billings and to collect the full and complete amount of all proper rates and charges, and the proper taxes thereon, applicable to each and all of the shipments in question. According to the testimony, only two consignors were involved in the undercharges in question and all of these undercharges had been collected by respondent prior to the time of the hearing.

There was also received in evidence by reference a certain written agreement, dated November 5, 1956, whereby Merchants Express of California has agreed to purchase and respondent has agreed to sell, respondent's operating rights as a highway common carrier together with certain of respondent's motor truck equipment. A copy of this agreement is attached as Exhibit G to Application No. 38601, which application requests the authority of the Commission to consummate the sale shown in the agreement. This application was filed with the Commission on November 21, 1956.

From the evidence introduced, the Commission finds that respondent has violated Section 494 of the Public Utilities Code in that on twenty different occasions, respondent, as a highway common carrier, failed to rate separately various separate shipments of property as required by Item 345 of respondent's Tariff No. 1 and Item 70 of respondent's Tariff No. 1-A and that because of such failure, respondent on each occasion charged and collected a different compensation, for the transportation of the respective shipments, than that required by the applicable rates and charges

specified in its tariffs filed and in effect at the time involved. The dates on which such violations occurred, together with the numbers of the freight bills involved, the number of separate shipments improperly consolidated on each occasion, the amounts actually charged for the transportation, the amounts that should have been charged for the transportation, and the resulting undercharges are shown in Appendix A which is attached hereto and hereby made a part hereof.

The Commission finds that respondent, upon learning of the violations and on its own initiative, undertook to and did collect from the shippers involved all undercharges caused by the violations hereinabove mentioned.

The Commission further finds that the only commodities hauled at the time the violations occurred were butter, dry milk powder, and medium heat powder.

The record does not show that respondent is a prior offender. While respondent admits these violations, circumstances surrounding the same justify mitigation. Respondent is hereby placed upon notice that a repetition of these violations, even under the circumstances here shown, will be dealt with more severely.

O R D E R

The Commission having instituted investigation herein, public hearing having been held and the Commission being informed in the premises,

IT IS ORDERED:

(1) That Kings County Truck Lines is directed to cease and desist from transporting multiple lot shipments except in accordance with the conditions of the tariff rules in question.

(2) That the operating authority of Kings County Truck Lines, granted by Decision No. 49412 in Application No. 34820, and Decision No. 51529 in Application No. 35023, are hereby suspended for a period of one day which shall be February 1, 1957.

(3) That the permits issued to Kings County Truck Lines, identified as Radial Highway Common Carrier Permit No. 54-3146, Highway Contract Carrier Permit No. 54-3147, and City Carrier Permit No. 54-3640, are hereby suspended for a period of three days beginning February 4, 1957.

(4) That the secretary of the Commission is directed to cause personal service of this order to be made upon Kings County Truck Lines, and this order shall be effective one day after the completion of said service.

Dated at Los Angeles, California, this 29th day of January, 1957.

W. E. [Signature] President
Roy [Signature]
[Signature]
R. [Signature]
[Signature] Commissioners

APPENDIX A

<u>Date</u>	<u>Freight Bill Number</u>	<u>Number of Separate Shipments Involved</u>	<u>Amount Actually Charged</u>	<u>Proper Charge</u>	<u>Undercharge</u>
11/11/56	F77575	7	192.09	401.55	209.46
11/11/56	F78714	2	84.60	93.13	8.53
11/ 4/56	F77576	5	279.26	343.10	63.84
10/31/56	F78136	2	161.03	206.59	45.56
10/16/56	F74774	8	224.43	372.82	148.39
10/ 8/56	F76722	3	214.82	278.74	63.92
10/ 4/56	F76503	3	240.05	298.22	58.17
10/ 1/56	F75352	6	227.06	361.06	134.00
9/23/56	F75611	2	171.92	181.53	9.61
9/11/56	F74771	4	177.54	250.15	72.61
9/ 9/56	F74773	2	149.03	170.90	21.87
8/31/56	F73628	8	244.77	404.63	159.86
8/27/56	F73836	6	185.72	315.21	129.49
8/21/56	F73922	3	184.30	229.30	45.00
8/11/56	F73256	3	169.04	238.06	69.02
8/11/56	F73378	2	161.12	173.57	12.45
8/11/56	F73078	7	269.37	459.52	190.15
8/ 2/56	F72859	3	301.46	320.94	19.48
7/10/56	F72554	3	153.05	194.84	41.79
6/18/56	F69489	3	203.88	305.42	101.54