

ET

Decision No. 54499

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, )  
rates, and practices of RUSS DI SALVO, )  
dba DI SALVO TRUCKING, also known as )  
RUSSELL S. DI SALVO, dba DI SALVO )  
TRUCKING CO. )

Case No. 5858

Frank Loughran, for respondent.  
Martin J. Porter, for the Commission staff.  
Frank H. Terramorse, in propria persona.  
Willard S. Johnson, in propria persona.

O P I N I O N

On December 11, 1956, the Commission issued an order instituting investigation into the operations, rates and practices of Russ Di Salvo, doing business as Di Salvo Trucking, also known as Russell S. Di Salvo, doing business as Di Salvo Trucking Co., respondent herein. Particular reference was made to alleged misapplication of tariff rules relating to shipments transported in multiple lots.

A public hearing was held before Examiner Thomas E. Daly at San Francisco on January 10, 1957, at which time and place the matter was submitted and is now ready for decision.

During the course of the hearing the staff presented one witness from its Field Section and one from its Rate Section. The results of their investigations were introduced into the record. Respondent testified on his own behalf.

The period covered by the investigation included the months of May through September, 1956. On April 17, 1956, by Decision No. 52905 in Application No. 36124, respondent was authorized to operate as a highway common carrier for the

transportation of general commodities with certain exceptions between San Francisco Territory, Los Angeles Territory, Fresno, Stockton, and points intermediate to Fresno and Stockton on U. S. Highway No. 99. These operations were conducted under a tariff filed with this Commission which became effective September 13, 1956. Prior to that time, his operations between the same points were performed under a radial highway common carrier permit and a highway contract carrier permit.

The record consists primarily of 23 freight bills (Exhibits 2 to 24 inclusive) and supporting documents. Under each freight bill respondent consolidated lots of property tendered on separate bills of lading. This practice was apparently followed in reliance on Item 85-A of Minimum Rate Tariff No. 2 for the operations as a permitted carrier. The staff, however, contends that the consolidated shipments failed to comply with the tariff rules in question and therefore each lot should have been treated as a separate shipment.

Item 85-A of Minimum Rate Tariff No. 2 reads as follows:

SHIPMENTS TRANSPORTED IN MULTIPLE LOTS

(a) When a carrier is unable to pick up an entire shipment, including a split delivery shipment, at the time of the initial pickup, or when a carrier at its option and for its operating convenience picks up a shipment in more than one vehicle or at more than one time, the following provisions shall apply in addition to other applicable rules and regulations:

1. The entire shipment shall be tendered at one time and shall be available to the carrier for immediate transportation at the time of the first pickup.
2. A single shipping document for the entire shipment tendered shall be issued prior to or at the time of the first pickup.

3. The date, quantity, kind and weight of the property in each pickup shall be shown on the single shipping document as it is separately picked up, or in lieu thereof, an additional shipping document may be issued for each pickup which shall give reference to the single shipping document covering the entire shipment and shall be attached to and become a part thereof.
4. The entire shipment shall be picked up by the carrier within a period of 2 days computed from 12:01 a.m. of the date on which the first pickup commences, excluding Saturdays, Sundays and legal holidays. (See Exception.)
5. The separate pickups made in accordance with the foregoing provisions shall constitute a composite shipment which shall be subject to the rates named or provided for in this tariff, including Items Nos. 200, 210, 220, and 230 series, in effect on the date of the first pickup, for the transportation of a single shipment of like kind and quantity of property picked up or transported on a single vehicle.

(b) Any property separately picked up without complying with the foregoing provisions shall constitute a separate shipment and shall be subject to the rates, rules and regulations applicable thereto.

Exception: - Will not apply to split pickup shipments. See Paragraph (1) of Item No. 11 series.

Although the freight bills may be considered as a single document as required by subsection 2 of Section (a) they completely fail to meet the requirements of subsection 3, which calls for detailed information of each pickup. Nor do the bills of lading or supporting documents attached to the freight bills comply with the alternative portion of subsection 3 inasmuch as they fail to refer to the freight bills. With but few exceptions the pickups were not made within the two-day period required by subsection 4. It is obvious that the movements handled on the

permitted carrier operations fail to comply with the conditions set forth in Item 85-A of Minimum Rate Tariff No. 2 and, therefore, the component parts of said shipments should have been considered and rated as individual shipments.

For respondent's common carrier service, treatment as separate shipments also is required under Item No. 940 of California Common Carrier Motor Freight Local and Joint Tariff No. 1, Cal. P.U.C. No. 1.

Upon rating all of the movements involved in the 23 freight bills referred to as separate shipments, the undercharges amount to \$2,668.59.

Respondent testified that he started in the trucking business with his father in 1938. In 1945 he commenced his own trucking business which has grown and developed to the point where he is operating numerous pieces of equipment and employs approximately 75 persons. He testified that he has been primarily concerned with operations and left the matter of rates to an employee, who has since been replaced by a more experienced rate man. He has had no prior violations and stated that if his operating authority is suspended it would materially affect his financial status and thus jeopardize the jobs of his employees.

The conditions of the tariff rules in question are not so difficult that they defy the average lay person's understanding. On the contrary, they rather simply set forth the procedure that must be followed in the case of multiple lot shipments. Any deviation from such a procedure whether intentionally or unintentionally tends to undermine the rate structure and the very purpose of sound regulation. It is incumbent upon this Commission, therefore, to impress upon those within the industry, who have permitted themselves to fall into a state of lethargy and

indifference, that they will have to comply strictly with the statutory provisions and the Commission's rules, regulations and orders.

Respondent will be directed to cease and desist from the collection of charges not authorized. Respondent's operating authority will be suspended for five days, and respondent will be directed to collect the undercharges set forth in Appendix A attached hereto.

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 Russell S. Di Salvo 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 Russell S. Di Salvo granted by Decision No. 52905 in Application No. 36124 as well as his Radial Highway Common Carrier Permit No. 38-5692 and Contract Carrier Permit No. 38-5693 are hereby suspended for a period of five days beginning March 18, 1957.

3. That all rates and charges filed with the Commission by Russell S. Di Salvo between the points authorized by Decision No. 52905 are hereby suspended for the five-day period beginning March 18, 1957.

4. That Russell S. Di Salvo shall, not less than five days prior to the beginning of the suspension period, file suspension supplements to his tariff on file with the Commission stating that his rates and charges are under suspension and may not be used for the five-day period.

5. That Russell S. Di Salvo shall also post in his terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that its operating authority as set forth in Decision No. 52905 as well as that authorized under his radial highway common carrier permit have been suspended by the Commission for the period of five days.

6. That Russell S. Di Salvo is directed within twenty days after the effective date of this order:

- (a) To institute and diligently prosecute proceedings to collect the amounts indicated upon Appendix A attached hereto.
- (b) To notify the Commission in writing upon the consummation of said collections.

7. That in the event that the charges to be collected as provided in paragraph 6 of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, Russell S. Di Salvo shall submit to the Commission on Monday of each week, a report specifying the action taken to collect said charges and the results of said action, until said charges have been paid in full or until further order of this Commission.

8. That the Secretary of the Commission is directed to cause personal service of this order upon Russell S. Di Salvo and this order shall be effective twenty days after the completion of said service.

Dated at San Francisco, California, this 5th day of February, 1957.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Commissioners

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.

## APPENDIX A

<u>Freight Bill</u>	<u>Amount that Should Have Been Charged</u>	<u>Amount Actually Charged</u>	<u>Amount to be Collected</u>
72655	\$486.46	\$368.18	\$118.28
71212	504.41	374.77	129.64
72135	426.15	251.97	174.18
72874	577.21	371.13	206.08
71664	439.55	316.66	122.89
70421	240.71	222.30	18.41
72149	139.08	112.32	26.76
70597	414.50	294.95	119.55
70144	350.95	252.15	98.80
72078	377.93	259.65	118.28
72396	448.13	322.77	125.36
71285	578.01	341.15	236.86
72798	578.82	373.15	205.67
72313	125.97	121.88	4.09
74113	491.02	260.49	230.53
73739	369.00	275.24	93.76
73643	416.80	332.90	83.90
73803	527.64	389.15	138.49
73897	111.67	72.47	39.20
73934	178.14	154.56	23.58
73579	296.32	243.84	52.48
73529	425.58	240.95	184.63
73972	380.60	263.43	117.17