

ORIGINAL

Decision No. 54794

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates, and)
practices of JUSTO SANZBERRO and ALBERT)
YROZ, doing business as SANZBERRO)
LIVESTOCK TRANSPORTATION CO.)

Case No. 5770

Francis X. Vieira, for Justo Sanzberro
and Albert Yroz, doing business as
Sanzberro Livestock Transportation Co.,
respondents.
J. J. Deuel and Eldon Dye, for California
Farm Bureau Federation, interested
party.
Wm. C. Bricca, for the Commission's staff.

O P I N I O N

On May 22, 1956, the Commission, upon recommendation of its staff, instituted an investigation into the operations, rates and practices of Justo Sanzberro and Albert Yroz, doing business as Sanzberro Livestock Transportation Co., for the purpose of determining:

- (1) Whether respondents, or either of them, have acted in violation of the Public Utilities Code by charging, demanding or receiving a lesser compensation for the transportation of livestock than the applicable charges prescribed in Minimum Rate Tariff No. 3, or by failing to adhere to other provisions and requirements of said tariff concerning the proper classification of livestock under Item No. 10-B, proper use of truckload minimum weights under Item No. 65-C, compliance with the gross weight provisions of Item No. 123-A, and shipping document requirements of Item No. 125.

(2) Whether any or all of the operating authority of respondents should be canceled, revoked or suspended.

(3) Whether respondents should be ordered to collect from shippers the difference between charges billed or collected and minimum charges due under Minimum Rate Tariff No. 3.

Public hearing was held before Examiner Jack E. Thompson on July 24, August 31 and October 5, 1956, at Stockton. The matter was taken under submission November 20, 1956, by stipulation of respondents and the Commission's staff.

Respondents are engaged in the transportation of livestock as a highway carrier, having been issued a permit as a radial highway common carrier as well as a certificate of public convenience and necessity as a highway common carrier. At the time of the hearings and during the period January 1, 1956 to March 31, 1956, inclusive, respondents had not filed a common carrier tariff which is a condition precedent to the exercise of the certificate of public convenience and necessity granted by the Commission in its Decision No. 52513 dated January 23, 1956.

The Commission's staff presented evidence respecting the transportation of livestock by respondents as indicated on 33 of respondents' freight bills. It was alleged by the staff that in connection with each shipment represented by the freight bills there were one or more violations of the requirements of Minimum Rate Tariff No. 3 as follows:

(1) Charging less than the charge applicable under the minimum rates.

(2) Failure to obtain a certified weight certificate as required in Item No. 123-A.

(3) Failure to show on the shipping documents whether the shipment was transported to or from packing houses, slaughterhouses, feed lots and auction yards.

(4) Failures to show on the shipping documents the type of equipment used in the transportation and whether such equipment was single-decked or double-decked when bedding was furnished by the carrier.

For convenience, when the allegations and the facts concerning several shipments are similar, such shipments and freight bills will be considered together herein.

Freight Bill No. 09151 dated January 5, 1956

The documents offered in evidence show that 64 calves were transported from Tovrea Land and Cattle Co., Tovrea, Arizona, to Banning by "Del George Trans." At Banning respondents received the shipment from "Del George Trans." and delivered it to Wm. Taaffe & Co. at San Francisco. The consignee is a slaughterhouse. Respondents obtained a certified weighmaster's certificate showing that the shipment weighed 25,580 pounds. The charges to Wm. Taaffe & Co., as shown on the freight bill, are computed on 25,000 pounds at the rate of \$1.18 per 100 pounds. The staff alleges that the minimum charge applicable was 25,580 pounds at the \$1.18 cent rate and that there is a resulting undercharge of \$6.84.

The respondents denied that the minimum rates are applicable to the transportation in that the shipment is in interstate commerce. The staff contends that the shipment is of a type of interstate commerce that the Commission has undertaken to regulate.

Other than the fact that Wm. Taaffe & Co. is a slaughterhouse there was no evidence concerning this shipment other than the information appearing on the shipping documents. From that information it appears that the service performed by respondents was

wholly within California and that the charge assessed was made against Wm. Taaffe for the California portion of the haul. The transportation appears to be in interstate commerce; however, transportation of livestock by motor vehicles engaged solely in such use is specifically exempted from rate regulation by the Interstate Commerce Commission (Sec. 203 (b) (6) Interstate Commerce Act). Transportation in interstate commerce exempted from federal regulation is subject to the provisions of the Public Utilities Code and to the Commission's minimum rate tariffs.¹

Item No. 123-A of Minimum Rate Tariff No. 3 requires that transportation charges be assessed on the gross weight of the shipment as shown on a certified weighmaster's certificate. With respect to the shipment covered by Freight Bill No. 09151, the Commission is of the opinion and finds that respondents did, by means of an incorrect statement of weight on said freight bill, permit Wm. Taaffe & Co. to obtain transportation of livestock from Banning, California, to San Francisco, California, at rates less than the minimum rates established by the Commission, the resulting undercharge being \$6.84.

Freight Bill No. 09355 dated February 18, 1956

The documents presented in evidence show that on February 18, 1956, respondents transported 300 lambs from a pasture seven miles outside of Brawley to Coates Commission Co., a commission house located at the Union Stockyards at South San Francisco. Respondents obtained a certified weighmaster's certificate showing that the shipment weighed 35,240 pounds. The charge shown on the freight bill is 25,000 pounds at the rate of \$1.37 per 100 pounds plus 3 percent surcharge.

¹ Com. Inv. Valley Express Co., 54 Cal. P.U.C. 53, 55 (1955); Calif. Grape and Tree Fruit League, et al., 53 Cal. P.U.C. 541, 542 (1954); D. 50625, A. 35296 (1954) John C. Barulich (Airport Drayage Co.).

The staff alleges that the applicable minimum charge is 35,240 pounds at a combination rate of $11\frac{1}{2}$ cents per 100 pounds plus 3 percent surcharge added to 99 cents per 100 pounds and that there is an undercharge of \$37.79.

Respondents assert that the provisions of Item No. 123-A authorize the use of the minimum weight of 25,000 pounds as a certified weight need not be applied except upon shipments having origin or destination at packing houses, slaughterhouses, feed lots and auction yards.

Item No. 123-A provides:

"Charges shall be assessed on the gross weight of the shipment evidenced by a certified weighmaster's certificate (except) On shipments transported other than to or from packing houses, slaughter houses, feed lots and auction yards, when actual gross weight is not obtained and is not evidenced by certified weighmaster's certificate, charges for shipments of cattle, hogs or sheep shall be based upon the minimum weights specified in Item No. 65."
(Emphasis added)

It is clear from the aforesaid item that when a certified weighmaster's certificate is obtained, the charge assessed must be on the weight shown thereon. The Commission finds with respect to the shipment covered by Freight Bill No. 09355 that the respondents did, by means of an incorrect statement of weight on said freight bill, permit Coates Commission Co. to obtain transportation of livestock from a pasture located seven miles from Brawley and three miles north of Imperial to South San Francisco at rates less than the minimum rates established by the Commission, the resulting undercharge being \$37.79.

Freight Bills Nos. 09066 dated January 17, 1956, 09075 dated February 18, 1956, and 09363 dated March 7, 1956

The documents presented in evidence show that these freight bills covered shipments of cattle moving between pastures and commission houses at stockyards. In every case no certified weighmaster's certificate was obtained and the charges were assessed on a minimum weight of 30,000 pounds. A bedding charge of \$1.35 was assessed in connection with each shipment. In every case the number of cattle hauled did not exceed 39 head.

The staff alleges that the respondents failed to show on the shipping documents the type of movement involved (e.g., pasture to commission house) and the number and type of vehicles used in the transportation. It is contended that the rule in Item No. 125 (8) requires that there be shown on the document "Such other information as may be necessary to an accurate determination of the applicable minimum rate and charge", that under Item No. 123-A the type of movement must be known in order to determine whether a certified weighmaster's certificate is required, and under Item No. 100-C the type of equipment and whether such equipment is "single deck" or "double deck" is necessary to determine the applicable charge for bedding.

With respect to showing the type of movement on the freight bills, it is clear, as indicated above in connection with Freight Bill No. 09355, that where a certified weighmaster's certificate is obtained the minimum rate shall be that based upon the weight so shown. Item No. 123-A requires the obtaining of certified weighmaster certificates except under certain conditions and provides that under those conditions where a certified weighmaster's certificate is not obtained that the minimum rate shall be predicated upon

specified minimum weights, 30,000 pounds in the case of cattle. It appears reasonably evident that where a certified weighmaster's certificate is not obtained, and the conditions of the exemption are met, that there would be no rate violation where the carrier assessed the proper rate on 30,000 pounds. It is also evident that where the conditions of the exemption do not obtain and a certified weighmaster's certificate is not secured that the applicable charge could never be ascertained because the certificate is necessary to the determination of the proper charge. It would appear that the notation on the shipping document of the type of movement involved is not information necessary to the determination of the applicable minimum rate but is information which is necessary to a determination of whether a certified weighmaster's certificate was required to be obtained. That such information is necessary to the enforcement of the rule requiring the securing of certified weighmaster's certificates there is little doubt; however, we are of the opinion that the placing of such information upon the shipping documents is neither specifically nor impliedly required by the provisions of the tariff. Such being the case, the failure of the respondents to supply such information does not constitute a violation of any rule or regulation in the tariff.

The bedding charges provided in Item No. 100-C are dependent upon whether the equipment utilized is a truck, truck and trailer or tractor and semitrailer, and whether said equipment is single or double-decked. For double-decked trucks and for a single-decked truck and trailer unit and tractor and semitrailer unit the applicable charge for bedding is \$1.35. When the latter two types of units are double-decked the applicable charge is \$2.03. The shipments, covered by the freight bills here involved, were of cattle. No more than 39 head were transported in each shipment. It is not customary to

double deck shipments of cattle. The respondents operate trucks and trailers and it is reasonably certain that the transportation of 39 head of cattle would not require the double decking of the equipment. The bedding charge assessed was \$1.35 which is the applicable charge for furnishing bedding on truck and trailer equipment single-decked. It appears obvious from the face of the document that the bedding charge assessed was no lower than the applicable minimum.

The shipping document rule in Item No. 125 is not a minimum rate but a rule established by the Commission under Section 3665 as necessary to the application and enforcement of the minimum rates established for the transportation of livestock. The rule must be construed as it pertains to the application or enforcement of such rates. Technicalities of the rule do not prevail where from the face of the shipping document it is clear that the charge assessed is no lower than the applicable minimum.

With respect to Freight Bills Nos. 09066, 09075 and 09363, the Commission is of the opinion and finds that the respondents have furnished all of the information required as necessary to the determination of the applicable minimum rate and charge.

Freight Bills Nos. 09031 and 09358 dated February 25, 1956

These documents cover the transportation of two loads of lambs totaling 583 head from William S. Young, from Westmoreland to Schiene Commission Co., South San Francisco. The evidence shows that Schiene Commission Co. operates as what is commonly called a commission house at the Union Stockyards in South San Francisco. The respondents assessed charges on 25,000 pounds for each load. No certified public weighmaster's certificate was obtained; however, the respondents received an off-car weight from the consignee of 63,575 pounds less 1,750 pounds for "fill".

It is alleged that the respondents were required to obtain a certified weighmaster's certificate for each load transported and

to show upon the shipping documents the type of movement involved as well as the type of equipment and whether said equipment is single or double-decked.

The requirement respecting the obtaining of certified weighmaster's certificates is contained in Item No. 123-A of the tariff. The item does not specifically state that carriers shall obtain certified weighmaster's certificates; however, the language of the item makes it perfectly clear that certified weight certificates are required on all shipments transported to or from packing houses, slaughterhouses and feed lots. In the case of other shipments, the exceptions contained in Notes Nos. 1 and 2 indicate that certified weighmaster's certificates are not required. The form of Livestock Freight Bill set forth in Section 4 of the tariff which Item No. 125 states "will be suitable and proper" corroborates this construction. Note 3 of the form provides "Certified Weight Certificate shall be secured and attached to copy of Freight Bill maintained by carrier." The aforesaid note has reference only to movements other than to or from an auction and other than pasture to pasture.² The movements in question here were not to or from a packing house, slaughterhouse, feed lot or auction yard. A certified weighmaster's certificate was not required.

With respect to the type of movement not appearing on the freight bills, for the reasons set forth in the discussion concerning Freight Bills Nos. 09066, 09075 and 09363, it does not appear that respondents were required to set forth such information on the shipping documents.

The charge assessed by respondents for bedding was \$2.03 for each load. This is the minimum charge for a truck and trailer

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Pasture to Pasture is defined on the form as "not consigned to or from packing houses, slaughterhouses, feed lots and auction yards."

unit double-decked and is the highest minimum charge for bedding. It is, therefore, clear from the shipping documents that respondents did not assess a charge for furnishing bedding less than the minimum charge required under the tariff. Under such circumstances the placing of such information upon the shipping document is not necessary to a determination of whether the charges assessed were no lower than the applicable minimum.

With respect to Freight Bills Nos. 09031 and 09358, the Commission is of the opinion and finds that respondents were not required to obtain a certified weighmaster's certificate for the shipments and the respondents have furnished all of the information on said documents that was required.

Freight Bills Nos. 09215 dated February 18, 1956, 09312 dated February 21, 1956, 09356 dated February 21, 1956, 08948 dated February 27, 1956, and 09171 dated February 27, 1956

These freight bills covered the transportation of cattle from Livestock Buying Co. at a feed lot in Thermal to Zenith Packing Co., Los Angeles. The greatest number of cattle transported in any one shipment was 36 head. Attached to the documents were weight tickets which indicate that the weights shown thereon were off-car weights or hoof weights taken at point of destination. Also attached to Freight Bills Nos. 09356 and 09215 were certified weighmaster's certificates. The charges assessed by respondents in every case was on the off-car weight. It is clear that under the provisions of Item No. 123-A respondents were required to obtain a certified weighmaster's certificate. They failed to do so on the shipments covered by Freight Bills Nos. 09312, 08948 and 09171. Certified weighmaster certificates were secured on the other two shipments. On the shipment covered by Freight Bill No. 09356 the weight of the

shipment as reflected on the certified weighmaster's certificate was 39,560 pounds; the charges were assessed on the off-car weight of 39,490 pounds. On the shipment covered by Freight Bill No. 09215 the certified weighmaster's certificate showed a weight of 35,100 pounds; the charges were assessed on the off-car weight of 34,820 pounds. The rate of $31\frac{1}{2}$ cents per 100 pounds plus 3 percent surcharge which was assessed appears to be the lowest applicable rate. Item No. 123-A requires that the charges shall be assessed on the gross weight of the shipment evidenced by a certified weighmaster's certificate.

The staff alleged that the respondent was required to show on the shipping documents the type of movement and the type of equipment. The circumstances surrounding the shipments in this regard are similar to those recited in the discussion of Freight Bill No. 09066 and our findings and conclusions contained therein in connection with these allegations are adopted here.

With respect to the shipments covered by Freight Bills Nos. 09312, 08948 and 09171, the Commission is of the opinion and finds that respondents did fail to observe the provisions of Item No. 123-A of Minimum Rate Tariff No. 3 in not obtaining certified weighmaster's certificates for the transportation of livestock from Thermal to Los Angeles. With respect to the shipments covered by Freight Bills Nos. 09215 and 09356, the Commission is of the opinion and finds that respondents did, by means of an incorrect statement of weight on said freight bills, permit Livestock Buying Co. to obtain transportation of livestock from Thermal, California, to Los Angeles, California, at rates less than the minimum rates established by the Commission, the resulting undercharges totaling \$1.10.

Freight Bills Nos. 09313 dated February 22, 1956, 08947 dated February 22, 1956, 09216 dated February 22, 1956, and C9357 dated February 22, 1956

The movements covered by these freight bills appear to constitute a shipment of four loads of sheep totaling 1,204 head from a pasture three miles southwest of Imperial to Schiene Commission Co., Union Stockyards, South San Francisco. Respondents obtained from the consignee an off-car weight of 124,020 pounds. This weight was distributed on the individual freight bills as 31,005 pounds per load. A bedding charge of \$1.35 was assessed for each load.

The staff alleged that the respondents failed to observe requirements concerning the furnishing of information or shipping documents regarding type of movement, type of equipment and whether such equipment was single-decked or double-decked.

As hereinbefore stated, the designation upon the freight bill of the type of movement is not required.

With respect to the furnishing of information concerning type of equipment and whether the equipment was single-decked or double-decked the situation here is different from that stated above in connection with other shipments. In the prior instances the bedding charge assessed was the highest minimum charge that would be applicable to the shipments. Here the charge assessed was for a double-decked truck or a single-decked truck and trailer. A charge of \$2.03 is applicable in connection with double-decked truck and trailer units. The average load transported here was 301 head. The evidence respecting other shipments indicates that on shipments of approximately 300 head, double-decked truck and trailer equipment was utilized. The freight bills here do not show on their face that the bedding charges assessed are no lower than the charges required. In view of such circumstances, the Commission is of the

opinion and finds that with respect to the shipments covered by Freight Bills Nos. 09313, 08947, 09216 and 09357 respondents, by not placing on the shipping documents information as to the type of equipment used and whether said equipment was single-decked or double-decked, did fail to observe the requirements of Item No. 125 of Minimum Rate Tariff No. 3 in that the information concerning type of equipment used and whether said equipment was single-decked or double-decked is necessary to an accurate determination of the applicable minimum charge for bedding.

Freight Bill No. 09130 dated March 31, 1956

The movement covered by this freight bill is a shipment of 282 lambs from a pasture 45 miles west of Mendota to Armour Packing Co., Los Angeles. A certified weight certificate was obtained showing the weight of the shipment was 28,480 pounds. The charge assessed was on a weight of 28,105 pounds. Respondents assessed \$2.03 for bedding. The documents show that delivery was made of 281 live lambs and one dead lamb.

The allegations made by the staff in its direct presentation covered only matters relating to the showing on the shipping documents the type of movement and type of equipment. Here the bedding charge assessed is the highest of the minimum charges and with respect to the matter of showing type of movement and type of equipment the situation here is similar to that discussed in connection with Freight Bills Nos. 09358 and 09031.

This is an investigation by the Commission of the operations, rates and practices of respondents and the Commission is not restricted to adjudicating the issues raised by the staff but is concerned with all of the matters that may be covered by the order instituting the investigation. The facts here show that the respondents assessed charges on a lesser weight than that evidenced by the

certified weighmaster's certificate. It is evident that 375 pounds were deducted for the dead lamb. The rate assessed of 77 cents per 100 pounds appears to be the lowest lawful rate for the transportation involved. The Commission is of the opinion and finds that on March 31, 1956, the respondents did, by means of an incorrect statement of weight, permit Armour and Company to obtain transportation of livestock at rates less than the minimum established by the Commission, the resulting undercharge being \$2.89.

Freight Bills Nos. 09208 dated January 16, 1956, 09263 dated February 26, 1956, and 09272 dated March 13, 1956.

These freight bills cover shipments of sheep and cattle consigned to slaughterhouses. Certified weighmaster's certificates were not obtained and attached to the shipping documents. With respect to these shipments, the Commission is of the opinion and finds that respondents, by not obtaining certified weighmaster's certificates, did fail to observe and comply with the requirements of Item No. 123-A of Minimum Rate Tariff No. 3.

Freight Bills Nos. 08896 dated January 4, 1956, 08899 dated January 8, 1956, 09022 dated January 22, 1956, 09063 dated January 11, 1956, 09116 dated January 18, 1956, 09161 dated January 28, 1956, 09260 dated February 3, 1956, 09267 dated March 5, 1956, 09367 dated March 2, 1956, 09405 dated March 25, 1956, 08943 dated February 9, 1956, and 08944 dated February 13, 1956

The shipments covered by these freight bills were for the transportation of livestock between points in California. The allegations by the staff were that the types of movement, type of equipment and whether the equipment was single-decked or double-decked should have been shown on the shipping documents and were not shown thereon.

As hereinbefore stated, the respondents were not required to show the type of movement. The other allegations concern whether or not it can be determined from the documents whether the bedding

charge assessed was no lower than the minimum charge required for the furnishing of bedding. In each instance the charge for bedding was the highest of the minimum charges that might be applicable to the shipments. For reasons hereinbefore set forth, the Commission is of the opinion and finds with respect to the freight bills listed above that the respondents have furnished information necessary to a determination that the bedding charge assessed was no lower than the applicable minimum established by the Commission.

Conclusions

The evidence shows that respondents were served with the applicable minimum rate orders of the Commission covering the transportation of livestock by radial highway common carriers and that they were at all times during the period January 1, 1956, to March 31, 1956, inclusive, bound to observe and comply with the requirements contained in Minimum Rate Tariff No. 3.

Of the 33 counts of violation alleged by the staff, 15 separate and distinct offenses have been found where respondents failed to observe and comply with the requirements of the Commission and the Public Utilities Code. The offenses include:

(1) Failing to comply with Section 3668 of the Public Utilities Code by permitting persons or corporations by means of incorrect statement of weight to obtain transportation of livestock between points in this State at less than the minimum rates established by the Commission, the undercharges totaling \$48.62. (5 counts)

(2) Failing to comply with the provisions of Item No. 123-A of Minimum Rate Tariff No. 3 by not obtaining certified weight certificates. (6 counts)

(3) Failing to comply with the provisions of Item No. 125 of Minimum Rate Tariff No. 3 by not showing on the shipping documents the type of equipment used and whether said equipment was single-decked or double-decked, such information being necessary to an accurate determination of the applicable minimum charge provided in Item No. 100-C for the furnishing of bedding for livestock. (4 counts)

All of the facts and circumstances of record have been considered. Respondents' operative rights will be suspended for five consecutive days and they will be directed to collect the undercharges found herein above.

So as to allow respondents opportunity to arrange their affairs to comply with the requirements of the order herein, it will be made effective thirty days after service upon the respondents.

O R D E R

Based upon the evidence of record and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 39-3846 issued to Justo Sanzberro and Albert Yroz, doing business as Sanzberro Livestock Transportation Co., be and it is hereby suspended for five consecutive days starting at 12:01 a.m. on the day following the effective date hereof.

(2) That respondents be and they are hereby directed to refrain, during the five days' suspension period prescribed above, from exercising the operative rights granted by the Commission in its Decision No. 52513 in Application No. 36304.

(3) That respondents be and they are hereby directed to take action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion and to notify the Commission in writing upon the consummation of said collections.

(4) That in the event charges to be collected as provided in paragraph (3) of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, respondents 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 the Commission.

5. The Secretary is directed to cause personal service of this order upon Justo Sanzberro and upon Albert Yroz and this order shall be effective thirty days after the completion of said services.

Dated at San Francisco, California, this 2nd day of APRIL 4, 1957.

Edmund Mitchell
President
Paul L. Lawrence
Manuel P. ...
H. ...
E. Lynn Fox
Commissioners