

**ORIGINAL**

Decision No. 55041

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations, rates,  
and practices of JOHN F. FREITAS,  
doing business as J. FREITAS TRANSFER  
CO. and FREITAS TRUCKING. )

Case No. 5850

Berol and Silver by Edward M. Berol and  
Bertram Silver, for respondent.  
William M. Larimore and Frank Loughran,  
for Brewers' Association, interested  
party.  
William C. Bricca and Arthur Lyon, for  
the Commission staff.

O P I N I O N

On November 19, 1956, the Commission issued an order instituting investigation into the operations, rates and practices of John F. Freitas, doing business as J. Freitas Transfer Co. and Freitas Trucking. Particular reference was made to alleged mis-application of Item 85-A of Minimum Rate Tariff No. 2 relating to shipments transported in multiple lots. Reference was also made to respondent's alleged failure to assess a 5 per cent surcharge and failure to charge an off-rail rate factor.

A public hearing was held before Examiner Thomas E. Daly at San Francisco. The matter was submitted on April 12, 1957, and is now ready for decision.

During the course of the hearing the staff presented two witnesses from its Field Section and one from its Rate Section. The results of their investigations were introduced into the record.

The period covered by the investigation included the months of April, July, August, September and October, 1956.

Respondent's operating authority consists of Radial Highway Common Carrier Permit No. 38-5798, Highway Contract Carrier Permit No. 38-5799, and City Carrier Permit No. 38-6122.

The record consists primarily of freight bills (Exhibits 2 to 9, inclusive, and 2a to 9a, inclusive) and supporting documents.<sup>1</sup> Under each freight bill respondent consolidated lots tendered with separate bills of lading. This practice was apparently followed in reliance on Item 85-A of Minimum Rate Tariff No. 2. The staff, however, contends that the consolidated shipments failed to comply with Item 85-A and therefore each lot should have been treated as a separate shipment. If rated as separate shipments a total undercharge of \$1,619.81 results.

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.

<sup>1</sup> Exhibits 2 to 9, inclusive, consist of photostatic copies of bills taken from respondent's files. Exhibits 2a to 9a, inclusive, consist of the documents from which the photostatic copies were made. They were received in evidence over the objection of respondent's attorney that the documents kept in respondent's files were carbon copies of the freight bills and supporting documents and the originals, which were in the files of the consignor, the Theo Hamm Brewing Co., should have been produced.

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.

The record indicates that respondent performs a contractual transportation service for the Theo. Hamm Brewery Co. in San Francisco. From the exhibits it is clear that respondent failed in approximately 17 instances to comply strictly with the provisions set forth in Item 85-A of Minimum Rate Tariff No. 2. Respondent relies upon the freight bills as meeting the single shipping document requirement of provision 2, but it is not possible to show that the freight bills were issued prior to or at the time of the first

pickup. In all instances, the documents fail to comply with provision 3. It may be said that the record does not indicate any flagrant abuse of the multiple lot rule. Each shipment was picked up within the specified time provided by provision 4 and if stricter adherence to documentary procedure had been followed the shipments could have been consolidated. Consolidation is an exception to Item 60-B of Minimum Rate Tariff No. 2, which provides that each shipment shall be rated separately. It was intended as a privilege for carrier convenience. As a result strict compliance with the provisions of the rule is required or the privilege is lost.

On three occasions respondent failed to assess the 5 per cent surcharge as required by Supplement No. 28 to Minimum Rate Tariff No. 2. The undercharges resulting therefrom amount to \$13.56.

On one shipment between San Francisco and Stockton and on three shipments between San Francisco and Fresno respondent failed to make off-rail charges. The undercharges amount to \$95.03. With respect to the three Fresno shipments it was stated that respondent relied upon a circular issued by The Atchison, Topeka and Santa Fe Railway Company which listed the party in Fresno as being served by Southern Pacific Company spur track. The listing was incorrect and it was stipulated that said party was not served by a spur track. It appears, however, on said Fresno shipments respondent was the victim of an honest mistake.

After consideration, the Commission finds and concludes that respondent collected charges not authorized on shipments covered by Exhibits Nos. 2 to 9, inclusive, and Exhibits Nos. 2a to 9a, inclusive.

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 John F. Freitas, doing business as J. Freitas Transfer Co. and Freitas Trucking, cease and desist from failing to assess minimum transportation rates.

2. That the operating authority of John F. Freitas, doing business as J. Freitas Transfer Co. and Freitas Trucking; i. e., Radial Highway Common Carrier Permit No. 38-5798, Highway Contract Carrier Permit No. 38-5799 and City Carrier Permit No. 38-6122, is hereby suspended for a period of five consecutive days beginning at 12:01 a.m. on the first Monday following the date upon which this order becomes effective.

3. That John F. Freitas, doing business as J. Freitas Transfer Co. and Freitas Trucking, 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 his operating authority has been suspended by the Commission for the period of five days.

4. That John F. Freitas, doing business as J. Freitas Transfer Co. and Freitas Trucking, is directed:

- (a) To collect the undercharges indicated in Appendix A attached hereto;

(b) To notify the Commission in writing upon the consummation of said collections.

5. That in the event that the charges to be collected as provided in paragraph 4 of this order, or any part thereof remain uncollected eighty days after the effective date of this order, John F. Freitas, doing business as J. Freitas Transfer Co. and Freitas Trucking, 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.

6. That the Secretary of the Commission is directed to cause personal service of this order to be made upon John F. Freitas, doing business as J. Freitas Transfer Co. and Freitas Trucking. This order shall be effective twenty days after said service.

Dated at Los Angeles, California, this 29th day of MAY, 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 Number</u>	<u>Amount Charged</u>	<u>Amount That Should Have Been Charged</u>	<u>Amount of Undercharges</u>
9594	\$ 41.40	\$116.64	\$ 77.24
9700	41.40	77.79	36.39
9732	318.43	429.44	111.01
9569	318.43	417.43	99.00
9589	102.93	123.08	20.35
9711	88.83	93.27	4.44
9729	68.62	105.97	37.35
9684	43.20	61.59	18.39
02086	315.85	430.31	114.46
02154	317.36	430.31	113.35
02156	316.13	430.40	114.27
9380	310.24	427.35	117.11
9384	315.15	428.61	113.46
9406	311.15	427.58	116.43
9448	310.24	427.35	117.11
9475	318.76	432.15	113.39
9545	314.50	428.44	113.94
9568	310.24	427.35	117.11
01662	316.03	418.85	102.82
9500	90.92	95.47	4.55
9622	91.44	96.01	4.57
01160	45.28	65.34	20.06
01242	44.33	63.56	19.23
01685	165.62	188.19	22.57