

Decision No. 5511S**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
 rates and practices of DANNY BOY) Case No. 5863
 TRUCKING COMPANY, INC.)

Marquam C. George, for respondent.
Martin J. Porter, for the Commission staff.

O P I N I O N

On December 18, 1956, the Commission issued an order instituting investigation into the operations, rates and practices of Danny Boy Trucking Company, Inc., and to determine whether respondent had violated Section 5003 of the Public Utilities Code by failing to pay the balance of fees due the Commission under the Transportation Rate Fund Act for the first quarter of 1956, and all of the fees due for the second and third quarters of 1956. Particular reference was made to alleged misapplication of Item 25-A of Highway Carriers' Tariff No. 2 relating to shipments transported in multiple lots.

A public hearing was held before Examiner Thomas E. Daly at San Francisco. The matter was submitted on April 10, 1957, 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.

The period covered by the investigation included the first six months of 1956. Respondent's operating authority consists of Radial Highway Common Carrier's Permit No. 1-8423, Highway Contract Carrier's Permit No. 1-7127, City Carrier's Permit No. 1-7396 and Household Goods Carrier's Permit No. 1-8354.

The record consists primarily of five invoices and nine freight bills (Exhibits 2-15 inclusive) and supporting documents. Under each invoice and freight bill respondent consolidated lots tendered with separate bills of lading. This practice was apparently followed in reliance on Item 85-A of Highway Carriers' 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 as required by Item 60-B of Highway Carriers' Tariff No. 2. If rated as separate shipments a total undercharge of \$1,439.33 results.

Item 85-A of Highway Carriers' 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. to 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.

Exhibits 2 to 15, inclusive, clearly show that the provisions of Item 85-A were not complied with and therefore each shipment should have been rated separately.

Respondent's president and general manager testified that to his knowledge respondent had never received from this Commission copies of appropriate minimum rate tariffs. He further testified that he was absolutely unfamiliar with rates and that the rating of shipments was performed by an employee. Exhibit No. 1 consists of a photostatic copy of an original document entitled "Tariff Record" file T-58,016, showing that the Minimum Rate Tariffs involved herein were mailed to respondent on January 20, 1956. Attached to the document is a certification by an assistant secretary of the Commission certifying that the Tariff Record is an official record of this Commission.

It was stipulated by counsel that respondent failed to pay the balance of fees due the Commission under the Transportation Rate Fund Act for the first quarter of 1956 and that respondent failed to pay the entire fees due for the second and third quarters of 1956. The amount due plus penalties for such period amounts to \$783.26.

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After consideration the Commission finds and concludes that respondent violated Sections 3667, 3668 and 5003 of the Public Utilities Code. The Commission further finds and concludes that respondent has evidenced a contemptuous and flagrant disregard for the Commission's rules and regulations and therefore its operating authority will be revoked.

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 that the permits issued to Danny Boy Trucking Company, Inc., i.e. Radial Highway Common Carrier Permit No. 1-8423, Highway Contract Carrier Permit No. 1-7127, City Carrier Permit No. 1-7396 and Household Goods Carrier Permit No. 1-8354 are hereby revoked.

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

Dated at San Francisco, California, this 11th day of JUNE, 1957.

[Signature]
President

[Signature]

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Commissioners