

**ORIGINAL**Decision No. 55440

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
 motion into the operations, rates and )  
 practices of MARJORIE DUARTE, doing )  
 business as OXNARD TRANSPORTATION CO., )  
 OXNARD VAN & STORAGE, OXNARD MOVING )  
 AND STORAGE, and A-1 OXNARD MOVING )  
 AND STORAGE. )

Case No. 5643

Cyril M. Saroyan, for the Commission Staff.  
Donald Murchison, for the respondent.

OPINION ON REHEARING

By Decision No. 54308, dated December 27, 1956, in Case No. 5643, this Commission issued an order against the respondent herein requiring (1) " ... that respondent shall henceforth issue all shipping documents in strict compliance with the provisions of Minimum Rate Tariff No. 4-A and Minimum Rate Tariff No. 2, whichever is applicable to the shipment involved", (2) " ... that respondent shall henceforth maintain all accounting records in strict compliance with the provisions of the Uniform System of Accounts" and (3) " ... that Radial Highway Common Carrier Permit No. 56-1247, Highway Contract Permit No. 56-1248, and Household Goods Permit No. 56-1511, issued to Marjorie Duarte (M. P. Zimmer Duarte) be and they hereby are suspended for five consecutive days starting at 12:01 a.m. on the day following the effective date hereof." On January 25, 1957, the respondent filed a petition for stay of the effective date of the order, reconsideration on the record as made or, in the alternative, oral argument before the Commission en banc.

Oral argument was had before Examiner Grant E. Syphers in Los Angeles on June 20, 1957, at which time the matter was submitted. It now is ready for decision.

Decision No. 54308, supra, contained five findings of fact by the Commission. The first of these was "That, on the evidence of record in this proceeding, Marjorie Duarte, respondent herein, appears to be the sole owner of the subject enterprises." The oral arguments and reconsideration of the record has disclosed no reason to change this finding and it now is reaffirmed.

The second finding related to the transportation of two truckloads of household furniture and furnishings for a Mrs. Ollie Swanson from Camarillo to Reseda. This hauling was performed by respondent on June 15, 1954, and in the light of the oral argument and reconsideration of this record, certain pertinent facts relating thereto as disclosed by the record are hereinafter set out. Mrs. Swanson testified in the original hearing that the hauling was performed in two trucks and that while they were parked on the hill in front of her house, she signed some shipping document and was given a copy thereof which she had lost. She paid for this shipment by check and to the best of her memory the amount was in excess of \$200. She did not have the cancelled check, testifying that it was not her practice to keep such documents.

The manager of the warehouse and dispatcher for the respondent company testified that he went to Mrs. Swanson's home on June 15, 1954, and there had her sign a shipping document which was received in evidence as Exhibit 13A. He identified this document from a group of exhibits at the original hearing. After Mrs. Swanson

had signed this document the two trucks were taken to a public scale and there weighed. Exhibits 13B and 13C are the two weight tickets which were received in evidence, one covering the weight of the household goods, and the other the weight of the general freight. After these trucks and their loads were weighed, the bills were taken back to the office of respondent company. There the owner, Mrs. Duarte, filled in the description of the goods on Exhibit 13A. That same day the dispatcher told Mrs. Duarte there should be two bills made out - one for the household goods and one for the freight. This was done and these two bills were received in evidence as Exhibit 14A showing the household goods, and Exhibit 15A showing the freight. These two new bills were then taken to Mrs. Swanson and she signed them at the time she received the furniture and freight at her new address and paid for the shipment.

In opposition to this testimony an investigator for the Commission staff testified that he had visited respondent company and copied the bill relating to the Swanson shipment. The copy he made was received in evidence as Exhibit 13. Subsequently he visited respondent's office but could not find the original record which he had previously copied. Sometime thereafter he saw the two additional documents received in evidence as Exhibits 14A and 15A.

In Decision No. 54308 we found that the original bill in this matter was "subsequently destroyed by respondent or her husband, Christopher J. Duarte." However, this finding must now be reversed since the re-examination of the record discloses that the Commission's investigator, while testifying in the original hearing on July 18, 1956, was shown both Exhibits 13A and 13 and stated that Exhibit 13

was a copy which he had made of Exhibit 13A. The specific testimony is hereinafter set out:

"MR. SAROYAN: I want to ask you one question regarding Exhibit 13. The Swanson freight bill, the first one, the one that has everything on the dry freight shipment.

A Wouldn't that be 13-A, the original?

Q Yes. It could be both 13-A and 13.

A 13 is a copy which I made of 13-A.

Q Will you hold both of them near you?

A Yes, sir."

Furthermore, the testimony is unrefuted to the effect that Mrs. Swanson signed Exhibits 13A, 14A and 15A. An examination of these documents discloses that the same signature appears on each of them.

Therefore the only issue in the Swanson movement concerns whether or not the shipping documents made out were defective. In considering this issue we must consider all three documents since we now find that these documents were made out by the respondent covering this shipment and were signed by the shipper, Mrs. Swanson. Viewed in this light the shipping documents are technically defective in that while they show that two men took part in the movement and that  $7\frac{1}{2}$  hours time was spent in packing and unpacking, they do not show whether two men took  $7\frac{1}{2}$  hours each, or whether the total of  $7\frac{1}{2}$  hours was performed in part by each of the two men, or all by one of them.

The third finding of Decision No. 54308 related to a shipment of a refrigerator from Los Angeles to Newbury Park, California,

to one John S. Williams. The shipment took place on March 23, 1954. According to the evidence the driver for respondent company delivered the shipment to Mr. Williams at Newbury Park and gave him copies of a bill of lading and of a freight bill. The bill of lading is in evidence as Exhibit 9A and the freight bill as Exhibit 9B. At the hearing Mr. Williams produced only his copy of the freight bill which was received in evidence as Exhibit 9 and obviously is a copy of Exhibit 9B. He gave no testimony concerning Exhibit 9A.

An investigator for the Commission staff testified that on June 2, 1954, he examined the freight bill, Exhibit 9B, at respondent's office. At that time, he stated, "I asked for the freight bill originally." About three weeks later he again examined respondent's records and on this occasion the bill of lading, Exhibit 9A, was attached to Exhibit 9B. A second investigator for the Commission staff testified that Mrs. Duarte told him that she had obtained this bill of lading at some later date when she had "gone back to the General Electric people." She further stated that this bill of lading was not available when the first investigator had examined the freight bill.

The issue concerning this shipment is whether or not the billing is complete. The freight bill, Exhibit 9B, and its copy, Exhibit 9, do not contain the weight nor the rate. Likewise the description of the commodity is set out as "one General Electric refrigerator." The bill of lading, Exhibit 9A, contains a more complete description of the commodity and does set out the weight, the rate, and the resulting charges. In Decision No. 54308, supra,

we found that the original freight bill was incomplete. This is true. However, if the so-called bill of lading, Exhibit 9A, was used, then there is sufficient information thereon to meet the requirements for a shipping document.

An examination of Exhibit 9A, and also the testimony of the driver, leads to the conclusion that this bill of lading was made out by the Timely Supply and Service Company, which company was the shipper. The bill was made out in typewriting and subsequent thereto, there was added in pencil the weight, rate, and the charges. The driver testified that these pencil notations were in the handwriting of Mr. Duarte. This record also indicates that the charge of \$7.21 is not violative of the minimum rates and charges applicable to this shipment.

In the light of this record we can only conclude that Exhibit 9A was used as a shipping document and that, therefore, the billing was not incomplete. The testimony of the driver was not refuted, the shipper was not specifically questioned by the staff counsel as to this bill of lading, and apparently no effort was made to determine by any direct testimony whether or not Exhibit 9A was in fact made out subsequent to the shipment. No testimony was offered from the Timely Supply and Service Company. The investigator who examined the freight bill, Exhibit 9B, specifically, stated that he asked for the freight bill, and the second investigator merely quoted a statement by Mrs. Duarte that at some later date she had gone back to the General Electric people. This record shows no connection between the Timely Supply and Service Company and "the General Electric people."

As to the fourth finding of Decision No. 54308, supra, that "respondent failed to keep her accounting records in accordance with the Uniform System of Accounts from the time she commenced operations until January 1, 1955," we now reaffirm this finding. The respondent contended that the order of investigation did not specifically include the problem of accounting records and this is true although the order of investigation stated in general terms that it was for the purpose of determining "whether any or all of the operating authority of said respondent should be cancelled, revoked or suspended for violations of Sections 3774 and 5285 of the Public Utilities Code.

The fifth finding of Decision No. 53408, supra, that "respondent was warned by a Commission representative, prior to performing the transportation involved in this proceeding, that proper shipping documents containing the information prescribed by applicable Commission tariffs must be issued for each shipment received for transportation" is hereby reaffirmed.

In conclusion, a reconsideration of this record, including the oral argument and all of the evidence adduced in this matter, leads us to reaffirm findings Nos. 1, 4 and 5 of Decision No. 53408, supra, to reverse finding No. 3 and to modify finding No. 2. Therefore, since the violations of respondent carrier are not so serious in the light of these modified findings, the respondent will not be subject to a suspension of operating authority but is hereby placed upon notice as to any future violations.

ORDER ON REHEARING

Decision No. 54308, dated December 27, 1956, in Case No. 5643, having been issued, a rehearing having been held, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that respondent shall henceforth issue all shipping documents in strict compliance with the provisions of Minimum Rate Tariff No. 4-A and Minimum Rate Tariff No. 2, whichever is applicable to the shipment involved.

IT IS FURTHER ORDERED that respondent shall henceforth maintain all accounting records in strict compliance with the provisions of the Uniform System of Accounts.

In all other respects the order in Decision No. 54308, supra, is hereby set aside and vacated.

The Secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon Marjorie Duarte,



and this decision shall become effective on the twentieth day after the date of such service.

Dated at San Francisco, California, this 9<sup>th</sup> day of August, 1957.

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

Commissioner Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.