

ORIGINAL

Decision No. 55476

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates and)
practices of TRINITY TRUCKING AND)
TIMBER COMPANY, a California corpora-)
tion.)
_____)

Case No. 5893

Robert J. Pedder of Pedder, Ferguson & Pedder,
for Respondent.
Frank Loughran, for San Francisco Movers, Inc.,
an interested party.
Martin J. Porter, for the Commission staff.

OPINION

On February 5, 1957, the Commission on its own motion issued its order instituting an investigation into the operations, rates and practices of Trinity Trucking and Timber Company, a corporation, for the purpose of determining whether it is violating Section 3668 of the Public Utilities Code by allowing Trinity River Lumber Sales Company, through the purported use of subhauler contractors, to obtain transportation between points within this State at rates less than the minimum rates established in Minimum Rate Tariff No. 2.

A public hearing was held before Examiner William L. Cole at San Francisco on April 25, 1957, at which time the matter was submitted.

Evidence

The evidence shows that respondent has been issued a permit by this Commission to operate as a radial highway common carrier. Respondent owns one truck and trailer.

Respondent's president is Mr. R. E. Byard, II. Mr. Byard also engages in the business of purchasing and selling lumber at which time he operates under the name of Trinity River Lumber Sales Company. Respondent's vice-president is the sales manager of the Trinity River Lumber Sales Company. Respondent's secretary, who is also one of its directors, is the office manager of the Sales Company. Respondent's treasurer is a salesman for the Sales Company. Respondent's office and the office of the Sales Company are in the same room. We find that respondent and the Sales Company are dominated and controlled by the same persons, there being a unity of interest between the two.

The evidence further shows that respondent primarily hauls lumber for the Sales Company. Whether respondent hauls property for any shippers other than the Sales Company was not shown in the record. A large majority of the shipments transported by respondent for the Sales Company are actually transported by other carriers under a sub-haul arrangement. A transportation representative of the Commission staff made an investigation of respondent's records, and testified that during the period covered by his investigations, 167 of the shipments performed by respondent for the Sales Company were performed by subhaulers. This represented 84.8 per cent of the total number of shipments performed by respondent for the Sales Company during that period of time.

The evidence shows that the Sales Company was billed by and paid to the respondent the correct minimum rates for the transportation performed as set forth in the Commission's Minimum Rate Tariff No. 2 but that the amount paid the subhaulers by respondent was less than the applicable minimum rate.

The evidence also shows that respondent is charged by the Sales Company, monthly, a certain sum for general services such as rent, lights, telephone, and such items. This charge comes about

due to the fact that respondent's office is in the same room as the Sales Company's office, which room the Sales Company rents from a third party. This monthly charge is set at 75 per cent of the Sales Company's monthly pay roll expense. It was shown that for October, 1956, the amount of this monthly charge was approximately \$1,600. On the other hand it was also shown that the Sales Company pays only \$225 per month to the third party for the rent of the entire room and for local telephone service. There was testimony that a portion of the monthly charge assessed against respondent by the Sales Company was for services that the Sales Company's employees performed for respondent. Just what these services are was not clearly shown in the record.

It was also shown by the record that the purchasers of lumber from the Sales Company pay a delivered price for the lumber. The evidence further showed that when subhaulers were used to haul the lumber, this delivered price was usually based upon the amount paid to the subhauler rather than the applicable minimum rate for the transportation.

Conclusions

Based upon all of the evidence in the record, it is the Commission's conclusion, and it so finds that through respondent's use of subhaulers and an unreasonable charge by the Sales Company for rent and other office expenses, respondent has by means of a scheme and device, permitted the Sales Company to obtain transportation between points within this State at rates less than the minimum rates established by the Commission in violation of Section 3668 of the Public Utilities Code.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein, now therefore,
IT IS ORDERED:

(1) That Trinity Trucking and Timber Company cease and desist from permitting Trinity River Lumber Sales Company to obtain transportation of property between points within this State at rates less than the minimum rates established by the Commission.

(2) That on or before the effective date of this decision, the Secretary of the Commission is directed to cause to be amended, the radial highway common carrier permit issued to Trinity Trucking and Timber Company, by prohibiting said Trinity Trucking and Timber Company whenever it engages subhaulers in connection with the transportation of property for Trinity River Lumber Sales Company, from paying such subhaulers less than the applicable minimum rate established by the Commission.

(3) That the Secretary of the Commission is directed to cause personal service of this order to be made on Trinity Trucking and Timber Company, a corporation, and this order shall become effective twenty days after the date of such service.

Dated at Los Angeles, California, this 27th day of August, 1957.

 President
Ralph Intarumer

R. Hardy

E. L. Fox

 Commissioners

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