

Decision No. 56346**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates,)
 and practices of Charles J. Groskopf) Case No. 5951
 and Stewart R. Weider, doing business)
 as GROSKOPF-WEIDER TRUCKING CO.)

J. Richard Townsend and Bernard C. Kearns, by
J. Richard Townsend, for respondent.

Martin J. Porter, for the Commission staff.

O P I N I O N

On July 2, 1957, the Commission issued an order of investigation into the operations, rates and practices of Charles J. Groskopf and Stewart R. Weider, doing business as Groskopf-Weider Trucking Company, for the purpose of determining whether respondents have acted in violation of Section 3667 of the Public Utilities Code by charging, demanding, collecting, or receiving a lesser compensation for the transportation of property as a highway permit carrier than the applicable minimum rates and charges prescribed in the Commission's Minimum Rate Tariff No. 2 (dealing with general commodities.)

A public hearing was held at San Francisco before Examiner William L. Cole on September 18, 1957 at which time the matter was submitted.

At the time of the hearing it was stipulated between respondents and the Commission staff that respondents possess permits as a highway contract carrier and as a radial highway common carrier issued by this Commission. It was further stipulated that respondents had been served and had in their possession the

Commission's Minimum Rate Tariff No. 2. From the evidence introduced it appears that various violations have occurred with respect to respondents' rates and practices. These violations are of different types and, for convenience, each type will be discussed separately.

Improper Consolidation As Split Delivery Shipment

The first type of violation involves the improper consolidation for billing purposes of several shipments into one split delivery^{1/} shipment. These improper consolidations resulted because of the failure on the part of respondents to issue the required shipping documents. The evidence indicates that the manner in which these various shipments were handled were the same, except as will be pointed out below.

The Commission finds and concludes that the following facts exist with respect to these shipments.

On each of certain days during 1955 and 1956, respondents were tendered a quantity of lumber from one consignor. The entire quantity would be tendered at the same time and at the same point of origin. However, various portions of the lumber would be consigned to different points of destination and to different consignees. All of the lumber would be placed on the same truck and the various portions thereof would be transported to their respective points of destination. At the time the lumber was tendered, respondents issued several documents all of which were on a uniform bill of lading form. A separate document was issued for the amount of lumber that was to

^{1/} Item 11-E subparagraph (m) of Tariff 2 defines a split delivery shipment as "a shipment consisting of several component parts delivered to (a) one consignee at more than one point of destination, or (b) more than one consignee at one or more points of destination, the composite shipment weighing (or the transportation charges computed upon a weight of) not less than 4,000 pounds, said shipment being shipped by one consignor at one point of origin and charges thereon being paid by the consignor when there is more than one consignee."

be delivered to each point of destination and would set forth thereon only that amount of lumber. The document would show the consignor, consignee and applicable point of destination. A separate freight bill was also issued by respondents for the amount of lumber delivered to each point of destination. The freight bill set forth only that amount of lumber and the charges shown thereon were for the transportation of only that amount of lumber. However, the rate used by respondents was determined on the basis that all of the lumber shipped on the same truck constituted one split delivery shipment.^{2/} In all but four instances, the transportation charges were paid by the consignor.^{3/} On September 13, 1957, respondents prepared what are entitled amended bills of lading. One of these bills of lading was prepared for each truckload of lumber in question and sets forth all of the lumber carried in that truckload regardless of the points of destination involved. Prior to September 13, 1957, respondents had not issued any one shipping document setting forth this information.

The pertinent item of Tariff 2 relative to the availability of the use of split delivery rates is Item 170 I. Subparagraphs (d) and (e) of this item provide:

"(d) For each split delivery shipment a single bill of lading or other shipping document shall be issued; and at the time of or prior to the tender of the shipment the carrier shall be furnished with written instructions showing the name of each consignee, the

^{2/} The evidence shows that in assessing the transportation charges for these shipments, respondents in some instances assessed the split delivery charge required by the tariff for split delivery shipments and in some instances they did not. The evidence also shows that, in some instances, respondents did not assess the same rate for each alleged component part of the alleged split delivery shipment as is required by the tariff. Except for these points, however, there is no evidence as to whether or not respondents' rates were proper assuming split delivery shipments were involved.

^{3/} These instances will be noted later.

point or points of destination and the description and weight of property in each component part of such shipment.

"(e) If split pickup is performed on a split delivery shipment or a component part thereof, or if shipping instructions do not conform with the requirements of paragraph (d) hereof, each component part of the split delivery shipment shall be rated as a separate shipment under other provisions of this tariff."

The Commission staff contends that the requirement of subparagraph (d) that a single shipping document be issued, was not complied with. For this reason the staff maintains that the transportation of the amount of lumber going to each point of destination constituted a separate shipment and should have been rated as such. Respondents, on the other hand, contend that this requirement does not specifically set forth the time when such a document must be issued; that for this reason the document can be issued at any time; and that the documents issued in September, 1957, fulfill the requirement in question. Consequently, respondents maintain that each truckload of lumber can be treated as one split delivery shipment.

It must be decided, therefore, whether this single shipping document requirement of paragraph (d) has been complied with. In several recent Commission decisions dealing with the Commission's Minimum Rate Tariff No. 10, it was held that the required shipping document must be issued prior to or at the time of the tender of the property for transportation. (Hendrix, Dec. 56047, Case 5873; Nunnemaker, Dec. 56039, Case 5925). It is the Commission's conclusion that for the same reasons, the shipping document required by paragraph (d) must be issued prior to or at the time of the tender of the property for transportation. The Commission wishes to point out that it has long been the accepted practice for carriers to issue shipping documents prior to or at the time of the tender of

the property for transportation. Inasmuch as the amended bills of lading in this case were not issued prior to or at such time, these amended bills of lading do not meet the single shipping document requirement of subparagraph (d).

Based upon the foregoing discussion, the Commission hereby finds and concludes, with respect to the shipments in question, that the provision of Item 170 I requiring the issuance of a single bill of lading or other shipping document for each split delivery shipment, was not complied with.

It must be ascertained what result stems from the conclusion. Subparagraph (e) of Item 170 I does not appear to cover the situation inasmuch as it deals with the lack of "shipping instructions" and not the lack of a single shipping document. Notwithstanding this, however, it is apparent when the single shipping document requirement in subparagraph (d) is read in conjunction with the definition of the word "shipment" in Item 11-E of the Tariff,^{4/} that the Commission intended that the non-issuance of a single shipping document for a split delivery shipment would require that the component parts of such a shipment be treated as separate individual shipments. For this reason and based upon the evidence in the record, it is the Commission's conclusion that the amount of lumber transported to each point of destination constituted a separate individual shipment. Further relevant facts with respect to these shipments, which the Commission hereby finds, together with its conclusions as to the applicable minimum charges, are set forth in the following table:

^{4/} Subparagraph (k) of Item 11-E defines "shipment" as meaning: "a quantity of freight tendered by one shipper on one shipping document at one point of origin at one time for one consignee at one point of destination."

<u>Frts. Bill No.</u>	<u>Date</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Wt. in Pounds</u>	<u>Charge Assessed</u>	<u>Correct Minimum Charge</u>
4710	12/15/55	Sonoma	Hawthorn	26,482	\$158.89	\$201.71
4711	12/15/55	Sonoma	Westminster	14,400	86.40	161.78
6306	6/4/56	Sonoma	Gardena	18,240	109.97	159.43
6305	6/4/56	Sonoma	Puente	22,274	150.78	200.71
4956	3/5/56	Sonoma	Los Angeles	30,420	173.39	202.08
4957	3/5/56	Sonoma	Los Angeles	12,200	69.54	124.07
4958	3/5/56	Sonoma	Los Angeles	2,066	16.40	37.32
6278	5/30/56	Sonoma	Los Angeles	10,800	71.88	118.97
6279	5/30/56	Sonoma	Santa Paula	26,328	166.60	223.39
2112	8/16/55	Sonoma	Los Angeles	10,569	66.24	113.19
2111	8/15/55	Sonoma	Redlands	11,038	77.75	124.02
2109	8/15/55	Sonoma	Colton	18,492	126.20	189.00
2290	7/27/55	Los Angeles	Hayward	3,200	67.31 ^{5/}	38.00
2287	7/27/55	Los Angeles	Hayward	2,300	5.00	33.58
2288	7/27/55	Los Angeles	Hayward	3,200	4.00	38.00
2289	7/27/55	Los Angeles	San Francisco	3,200	4.00	38.00
4924	2/27/55	Sonoma	Gardena	15,860	90.40	154.05
4925	2/27/55	Sonoma	Los Angeles	26,446	150.74	201.71
4717	1/9/56	Sonoma	Colton	7,920	56.48	103.12
3494	5/28/56	Los Angeles	Oakland	2,500	20.85	40.15

- A. The consignees paid the freight charges with respect to the shipments identified by freight bills 4957, 4958, 4924 and 3494.
- B. With respect to the shipments identified by freight bills 4717 and 3494, respondents maintained that each shipment constituted a component part of a split delivery shipment, the other component parts of which were not introduced into evidence and respondents rated these shipments as such. No amended bills of lading were introduced into evidence with respect to these shipments.
- C. Respondents did not introduce an amended bill of lading into evidence for the two shipments identified by freight bills 4924 and 4925.

With respect to the foregoing shipments, the Commission finds and concludes that respondents violated Section 3667 of the Public Utilities Code by charging and collecting less than the applicable minimum rates prescribed by the Commission due to the improper consolidation of individual shipments into split delivery shipments.

^{5/} This charge included a portion of the charges for the shipments identified by documents numbered 2287, 2288, 2289.

Consolidation of Shipments Having Same Destination

The second type of violation also involves the improper consolidation of two shipments for billing purposes. These two shipments were transported to the same point of destination, however, as contrasted with the split delivery problem hereinabove referred to. Again the improper consolidation resulted because of the failure on the part of respondents to issue the required shipping document.

The evidence shows, and the Commission hereby finds and concludes, that a certain quantity of lumber was tendered to respondents at the same time from the same consignor at the same point of origin, Los Angeles. This lumber was transported on May 25, 1956 on one truck to one consignee at one point of destination, San Francisco. Respondents treated the transportation as one shipment and assessed their charges accordingly. However, at the time of the tender, two bills of lading were issued, each covering only a portion of the total quantity of lumber. One bill of lading covered lumber weighing 7600 pounds and the other covered lumber weighing 5100 pounds. Respondents also issued two freight bills which corresponded to the two bills of lading. However, the two weights were combined on one freight bill and one charge, \$106.98, was assessed for the entire amount of lumber transported. The other freight bill didn't show any charge. On September 13, 1957, respondents issued an amended bill of lading covering the entire amount of lumber transported.

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Inasmuch as the entire quantity of lumber was transported to the same point of destination, the Tariff's definition of

"shipment" ^{6/} is the governing provision for ascertaining whether one or two shipments are involved in this instance. ^{6/} It is the Commission's conclusion, and it so finds, that two separate shipments were transported in this instance rather than one and that the total of the applicable minimum charges for the two shipments is \$132.72. For these reasons the Commission further finds and concludes that respondents violated Section 3667 with respect to these shipments.

Destination On Railhead

With respect to another shipment of lumber transported by respondents, the Commission staff contended at the time of the hearing that the point of destination was off railhead at the time the shipment took place and that respondents assessed a rail rate based upon the fact that the point of destination was on railhead. Evidence was introduced tending to show both that the point of destination involved was off railhead and that it was on railhead. It should be pointed out that the burden of proof to establish this point is on the Commission staff. Based upon all of the evidence, it is the Commission's conclusion that it cannot make a finding that the point of destination in question was not on railhead at the time the shipment took place. Therefore, the Commission cannot find that respondents assessed an incorrect charge for this shipment.

6/ Previously set forth in footnote 3/.

Diverted Shipment

Evidence was introduced concerning further transportation performed by respondents. The facts surrounding this shipment, which the Commission hereby finds, are as follows:

Respondents were tendered a quantity of lumber by the Sonoma Plywood Company at Sonoma. This lumber had a weight of 42,990 pounds. The lumber was consigned to Drake Sales in El Cajon. A bill of lading was issued setting forth this information. When the lumber reached El Cajon, the consignee took part of the lumber and directed the driver to deliver the remainder to another consignee in San Diego. This the driver did. The weight of that portion of the lumber sent on to San Diego amounted to 13,254 pounds. Respondents rated the transportation on the basis that it was a split delivery shipment and assessed a total transportation charge of \$286.78. The Commission staff contends that the transportation was a split delivery shipment but that there were no written instructions issued as required by Item 170-I subparagraph (d) and for this reason the transportation must be rated as if there were an individual shipment from Sonoma to El Cajon for the portion of the lumber delivered there and a second individual shipment from Sonoma to San Diego for the portion of the lumber delivered at San Diego. The Commission staff maintains that the total charge for this transportation should have been \$411.46.

It is the Commission's conclusion that the proper method of handling this transportation is to consider that one shipment of the entire amount of the property originally tendered occurred from Sonoma to El Cajon and that a second shipment from El Cajon to San Diego of the amount of lumber delivered there, took place. It is the Commission's conclusion that when Drake Sales, the

consignee at El Cajon, accepted part of the lumber and directed that the remainder be sent to a third person at another destination, it assumed control over the entire amount of lumber, thereby completing the delivery of the shipment from Sonoma. The direction by Drake Sales to the carrier to deliver a portion of the lumber to San Diego gave rise to an entirely new shipment. On this basis there is no evidence that respondents violated Section 3667 with respect to these shipments.

Conclusions

The Commission has found and concluded that respondents have violated Section 3667 of the Public Utilities Code by charging, demanding, collecting, or receiving a lesser compensation for the transportation of lumber as a highway permit carrier than the applicable minimum rates and charges prescribed by the Commission, resulting in total undercharges of \$868.20.

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The circumstances of record surrounding these violations do not appear to warrant the suspension of respondent's operating rights. Respondents will be ordered to cease and desist from such violations in the future and they will be further ordered to collect the undercharges hereinabove found.

O R D E R

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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 Charles J. Groskopf and Stewart R. Weider, doing business as Groskopf-Weider Trucking Company, is hereby directed to cease and desist from charging, demanding, collecting, or receiving

a lesser compensation for the transportation of lumber as a highway permit carrier than the applicable minimum rates and charges prescribed by the Commission.

(2) That respondents are hereby directed to take such action as may be necessary to collect the amounts of undercharges found in the preceding opinion.

(3) That in the event charges to be collected as provided in paragraph (2) 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 of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such action, until such charges have been collected in full or until further order of the Commission.

(4) The Secretary of the Commission is directed to cause personal service of this order to be made on Charles J. Groskopf and Stewart R. Weider and this order shall be effective twenty days after such service on both respondents.

Dated at San Francisco, California, this 11th day of March, 1958.

*James
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Charles E. ...
President

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Commissioners