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ORIGINAL

Decision No. 56378

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates and)
practices of J. A. NEVIS TRUCKING, INC.,)
a California corporation.)

Case No. 5890

Willard S. Johnson, for respondent.
Russell Bevans for Draymen's
Association of San Francisco, Inc.,
interested party.
William C. Bricca and Arthur J. Lyon,
for the Commission staff.

O P I N I O N

This investigation was instituted by the Commission on its own motion on February 5, 1957. Hearings were held in San Francisco on June 4 and 11, and September 16 and 27, 1957, before Examiner John Power. On the last-named date, oral argument was held and the matter was submitted.

The respondent operates under certificates of public convenience and necessity and permits issued by this Commission. The alleged rate violations hereinafter discussed arise under both types of authority.

As a permitted carrier, respondent is forbidden to assess and collect charges less than those prescribed by the Commission's minimum rate orders without authority from the Commission. The staff contends that it has done this and, for that reason, has violated

Section 3667 of the Public Utilities Code (referred to hereafter as the code). The staff further contends that in certain other transactions respondent has violated Section 494 of the code by deviating from its applicable tariff rate.

Respondent, by its own evidence, concedes most though not all of the staff charges. In some instances respondent admitted an undercharge but disagreed as to the amount. In a number of others respondent contended that the commodity carried was different from the one rated by the staff. Respondent contended also that the staff had not proved service of minimum rate orders. This last defense applies only on permitted carrier movements.

The last-mentioned defense is preliminary and will be considered first. The staff presented the applicable records by a series of certificates, making up four exhibits. The clerk who supervises the mailing of minimum rate orders testified, and the Commission's assistant secretary was available had he been called. Certain underlying documents were produced on request. The pertinent services were not denied by respondent, either in its oral testimony or by affidavit. The staff made out a more-than-prima-facie case that this specific carrier was served with all decisions and orders pertaining to its operations. The Commission finds and concludes that Section 3737 of the code was complied with as to this respondent.

The staff's rate statement became Exhibit No. 3. Each separate transaction was analyzed in a "part" or section of the

exhibit. There were twelve parts. Respondent's rate statement, Exhibit No. 10, followed the staff's method. Each part of Exhibit No. 10 was given the same number that the staff exhibit had used to designate the same transaction. The Commission will follow the same plan.

Parts 1, 2, 3, 9 and 10 involve alleged violations of minimum rate orders in respondent's permitted carrier service. The section of the code violated by any undercharges found to exist in this transportation is No. 3667.

Parts 1, 2 and 3 dealt with shipments of paper box board. Part 1 involved four loads picked up on three consecutive days; one on the first day, one on the second, two on the third. Respondent had originally rated the four loads as one consolidated shipment; the staff (Exhibit 3) as four shipments; and respondent (Exhibit 10) as two shipments. Item 85-A of Minimum Rate Tariff No. 2 requires that a single shipping document must be issued prior to or at the time of the first pickup. This was not done. It follows that the staff was correct in rating the individual loads as separate shipments. The Commission finds that there was an undercharge of \$303.19.

Part 2 involved three loads of the same commodity between the same consignor and consignee and the Commission finds an undercharge of \$228.10.

Part 3 involves six loads of the same commodity between the same two firms. Respondent billed all six lots as a single consolidated shipment. Respondent's Exhibit 10 consolidated the first five lots and separated the sixth. The staff (Exhibit 3) rated each lot separately. The resultant undercharge amounts to \$298.77.

The remaining two parts based on permitted operations are 9 and 10. The commodity involved, described as "quick-sorb", was thought by the staff witness to be one commodity, and by respondent's witness to be another. There is no evidence to support either witness. Respondent's exhibit conceded an undercharge. The Commission, however, is unable to determine what the commodity really was and therefore makes no finding of undercharge. There was, however, a violation in both cases of Item No. 255-C, paragraph 1(e), Minimum Rate Tariff No. 2, requiring description in tariff language not including "quick-sorb".

Parts 4, 5, 6, 7, 8, 11 and 12 are concerned with violations of respondent's filed tariffs in its certificated carrier operations. The seven undercharge violations complained of are therefore not affected by what was said above about service of minimum rate orders.

Part 4 involved a split delivery shipment. No written instructions were received from the shipper that would comply with Item 175 series, paragraph (d), of respondent's applicable tariff.^{1/} Therefore, the staff's rating in Exhibit No. 3 is found to be correct by the Commission. The undercharge is \$284.30.

Parts 5, 6, 7 and 8 involved a dispute concerning the commodity. In each case the staff's Exhibit No. 3 rated the shipments as knocked-down steel buildings. The respondent rates them in its Exhibit No. 10 as structural steel. Except for the documents there was no really competent evidence to establish the commodity. The Commission finds that the documents support the staff's position on parts 5 and 6, but on parts 7 and 8 they did not sustain the staff. The undercharges are: \$70.50 on part 5; \$63.44 on part 6; no undercharge proved on part 7; \$211.13^{2/} on part 8.

Parts 11 and 12 also deal with steel shipments. Respondent concedes an undercharge (Exhibit No. 10) of \$13.02 on part 11. The staff contended for a larger undercharge. The Commission finds an undercharge in the amount of \$13.02 as admitted by respondent.

Respondent admits no undercharge on part 12 but does admit an overcharge. This is a violation of respondent's tariff.

1/ J. A. Nevis Trucking, Inc., Local Freight Tariff No. 1, Cal. P.U.C. No. 3.

2/ An undercharge in this sum is shown on respondent's Exhibit No. 10 and explained by respondent's witness at Tr. 182.

The Commission finds and concludes that respondent charged, demanded, collected or received for the transportation of property rates or charges less than the minimum rates and charges applicable to such transportation or approved by the Commission for transportation of property referred to in parts 1, 2 and 3 of Exhibit No. 3 in this proceeding and thereby violated Section 3667 of the Public Utilities Code.

The Commission further finds and concludes that respondent charged, demanded, collected or received a different compensation for the transportation of property referred to in parts 4, 5, 6, 8, 11 and 12 than the applicable rates and charges specified in its schedules filed and in effect at the time; that respondent thereby violated Section 494 of the Public Utilities Code.

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 above-specified undercharges and to refund the overcharge.

O R D E R

Investigation having been instituted, public hearings having been held and evidence both oral and documentary having been adduced thereat and the Commission basing its decision upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

1. That the operating authority of J. A. Nevis Trucking, Inc., as a highway common carrier, is hereby suspended for a period of five consecutive days beginning at 12:01 a.m. on the second Monday after the effective date of this order. This suspension of operating authority shall apply only to transportation of shipments originating at Soule Steel Co., Columbia-Geneva Division of United States Steel Corporation and K. H. Davis Wire & Cable Corp.

2. That the operating authority of J. A. Nevis Trucking, Inc., as a radial highway common carrier and as a highway contract carrier is hereby suspended for a period of five consecutive days beginning at 12:01 a.m. on the second Monday after the effective date of this order. This suspension shall apply only to transportation of shipments originating at Los Angeles Paper Box and Board Mills.

3. That J. A. Nevis Trucking, Inc., shall make no lease of its equipment during the period of its suspension.

4. That respondent shall collect the undercharges and refund the overcharge found to exist in and by the foregoing opinion by such means, including court proceedings, as may be necessary to effect such collections.

5. That in the event charges to be collected as provided in paragraph 4 of this order, or any part thereof, remain uncollected ninety days after the effective date of this order, J. A. Nevis Trucking, Inc. shall submit to the Commission, on the first Monday

of each month, 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.

6. That the Secretary of the Commission is directed to cause personal service of this order to be made on J. A. Nevis Trucking, Inc.

The effective date of this order shall be twenty days after such service.

Dated at San Francisco, California, this 17th day of March, 1958.

John E. Mitchell President
Paul J. [unclear]
Matthew [unclear]
E. L. Fox
Commissioners