

ORIGINAL

Decision No. 56403

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of RAY SCHNEYER
TRANSPORTATION CO., a California
corporation.

Case No. 5944

Glanz & Russell, by Theodore W. Russell,
for respondent.
William Bricca, for the Commission staff.

O P I N I O N

This proceeding is an investigation on the Commission's own motion into the operations, rates and practices of Ray Schneyer Transportation Co., a California corporation, hereinafter called respondent, to determine (1) whether respondent has acted in violation of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation than the applicable charges prescribed in Minimum Rate Tariff No. 2; (2) whether respondent has acted in violation of the Public Utilities Code by failing to adhere to other provisions and requirements of Minimum Rate Tariff No. 2 including but not limited to the following items of said tariff: 500-J, 505-H, 690-H, and Supplement No. 32; (3) whether any or all of the operating authority of respondent should be canceled, revoked or suspended; and (4) whether respondent should be ordered to collect from shippers or other persons liable for freight charges the difference between charges billed or collected and minimum charges due under Minimum Rate Tariff No. 2.

Public hearings were held before Examiner Kent C. Rogers in Los Angeles on September 25, October 21, and November 27, 1957. On the last-named date the matter was orally argued and submitted.

It was stipulated that all transportation hereinafter referred to was pursuant to a contract carrier's permit issued by this Commission; that all of the transportation was within a 50-mile radius; and that the respondent had received copies of Minimum Rate Tariff No. 2, and all applicable amendments thereto, and Distance Table No. 4, prior to said transportation.

Upon the evidence of record the Commission makes the following findings of fact:

Respondent has nine or ten trucks and trailers, and four bobtail trucks. Its dock is located at 4344 East Sheila Street, Los Angeles, and is surrounded on three sides by the yard of Jameson Lumber Company, hereinafter referred to as Jameson, for which it has been carrying lumber for approximately six years. It is also carrying shipments for Flynn Forwarding Company and Ball Brothers. It does not solicit additional business and it limits its services to a 50-mile radius from its terminal. Jameson supplies lumber other than hardwoods, windows and doors for tract houses. When Jameson is informed that a tract of houses is to be constructed it furnishes respondent with the location of the tract and the number of houses to be built therein. Respondent then quotes to Jameson the cost per 1,000 board feet of delivering lumber to the tract. This quotation is a rate per 1,000 board feet for transporting loads based upon a minimum weight of 30,000 pounds from Jameson's Yard to the tract (see Exhibits Nos. 22 through 25). The majority of the loads exceed 30,000 pounds in weight but a higher rate is quoted to allow for short loads, and the number of short loads to a tract is small compared to the number of full loads thereto. During the months of November and December, 1956, respondent carried 398 loads of lumber for Jameson and approximately 25 per cent of these loads were in the under-20,000-pound weight bracket. Out of this group, 20 were

selected by the Commission's staff as representative of respondent's smaller loads. Of these 20 loads, six went to Santa Ana, one went to Buena Park, four went to Stanton (shown as Anaheim on respondent's documents), five went to La Habra, and four went to Santa Monica. The Santa Ana and Buena Park loads were for Fairview Ranchos. Buena Park is noncontiguous to Santa Ana. The Stanton loads were for Midwood Estates, the La Habra loads were for Rancho La Habra, and the Santa Monica loads were for Schrader & Sangermano. Exhibits Nos. 1 to 20, including all components of each, reflect the billing for said 20 loads which constituted a small portion of the total volume of lumber carried to each consignee by respondent for Jameson (Exhibit No. 27).

When Jameson secured a contract for lumber to a housing project, having used respondent's quoted transportation cost as a basis for its bid (Exhibits Nos. 22 through 25), the following procedure relative to carriage and documentation was followed:

The day before a load moved out, the Jameson dispatcher called respondent and advised it of the number of loads to move out the next day and the number of trucks needed. At that time the Jameson dispatcher had before him documents on Jameson Lumber Company forms, similar to Exhibits Nos. 1-B and 1-C, which listed the loads for a particular consignee the following day. He told the respondent where, on the lumber company lot, the lumber could be picked up. When the driver took the load the next morning he was given a document similar to Exhibit No. 1-D showing the time the truck left the yard and a form supplied by the respondent for signature by the consignee showing the consignor, consignee, destination, invoice number, description of the commodity carried, and a place for the signature of the consignee (Exhibit No. 26). When the load had been delivered, the driver marked the time he returned to the Jameson Yard on the

document similar to Exhibit No. 1-D, and delivered the consignee's signature document (Exhibit No. 26) to Jameson. Each day Jameson prepared a daily truck report similar to Exhibit No. 1-E which listed all loads carried for Jameson that day and delivered this document to respondent for a daily check. The document showing each load (e.g., Exhibits Nos. 1-B and 1-C) and the document showing the time in and out of the yard (e.g., Exhibit No. 1-D) were delivered by Jameson to respondent the day following delivery of the load. At that time respondent billed Jameson for the load (e.g., Exhibit No. 1-A). No copy of the delivery receipt (Exhibit No. 26) was retained by respondent.

The complete documentation for the 20 shipments referred to above is contained in Exhibits Nos. 1 through 20, including all lettered portions of each, and Exhibit No. 26. To be noted is the fact that certain information on some of said documents was not thereon at the time the staff made its investigation. Such information has been marked with a red line enclosure. The staff witness also stated that the last separately numbered and lettered item on the Exhibits Nos. 1 through 20 group, e. g., Exhibit No. 1-E, was not shown to him when he investigated and requested all documents pertaining to each transaction. In addition, the staff was never shown the delivery receipts, Exhibit No. 26, until the hearing.

From the evidence presented herein it appears, and we find, that Exhibits Nos. 1 through 20 show 20 separate shipments (Minimum Rate Tariff No. 2, Item 11-E K and Item 85-A). The rate quotations are not contracts but estimates of charges and, in any event, are subject to the provisions of the tariff. (Gardner v. Rich Mfg. Co., 68 Cal. App. 2d 725 at page 730 [1945]).

The respondent's attorney argued that the statute does not give the Commission power to specify what the terms and conditions of a contract must be and that the only power the Commission has is to

require that the rate shall not be below the minimum. There is, he stated, a difference between the fixing of the level of a charge and the prescribing of a rule, which purportedly relates to the protection of the enforcement of that level, and a rate which is, in fact, a dictation of the terms of the contract of employment. Mr. Schneyer has indicated, he said, that he considered the transportation as one single contract of carriage for each of the jobs. He stated further that respondent had been charged with violating the minimum rate order because the agreements do not meet the definition of a shipment or a tender of a single lot under Items 11-F and 85-A of Minimum Rate Tariff No. 2, and if that argument is sound, then the Commission is saying, as a matter of law, that a carrier may not make a contract for a series of services as one contract, and that he may not lawfully make any contract which has for its term a period greater than 48 hours.

The District Court of Appeal of California has specifically overruled respondent's contention that a contract carrier may enter into a contract which violates the provisions of Minimum Rate Tariff No. 2 (Gardner v. Rich Mfg. Co., 68 Cal. App. 2d 725 at page 730 [1945]). The Supreme Court of California subsequently followed the Gardner case Hischmoeller v. Natural Ice and Cold Storage Co., 46 Cal. 2d, 318 at 325 [1956].

It appears, therefore, that respondent is bound by the provision of Minimum Rate Tariff No. 2, Item No. 11-E (in effect in November and December, 1956) which in subdivision (K) states that "Shipment means 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" and the provisions of Item 85-A of said tariff subdivision (a)4 which provides that "The entire shipment shall be picked up by the carrier within a period of 2 days

computed from 12:01 a.m. of the date on which the first pickup commences, excluding Saturdays, Sundays and legal holidays."

The Commission having concluded that the shipments reflected in Exhibits Nos. 1 through 20, inclusive, are single shipments, the evidence further shows and we find that the respondent undercharged for the transportation services shown in the following numbered freight bills (Exhibits Nos. 1 through 20 inclusive) the amounts as set out below:

<u>Date</u>	<u>Freight Bill Number</u>	<u>Amount Charged and Collected by Respondent</u>	<u>Correct Total Charges*</u>	<u>Amount Undercharged</u>
11-20-56	S 40471	\$ 14.79	\$ 28.89	\$ 14.10
11-26-56	S 40587	16.63	28.89	12.26
11-29-56	S 40695	11.08	28.89	17.81
12-3-56	S 40786	18.67	28.89	10.22
12-6-56	S 40918	9.12	28.89	19.77
12-11-56	S 41057	1.18	11.13	9.95
12-26-56	S 411431	7.21	24.61	17.40
11-23-56	S 40541	20.04	24.61	4.57
11-30-56	S 40742	1.91	13.86	11.95
12-3-56	S 40782	1.04	10.35	9.31
12-21-56	S 41388	1.77	13.86	12.09
12-17-56	S 41227	22.48	24.61	2.13
12-18-56	S 41251	15.46	24.61	9.15
12-19-56	S 41036	2.91	16.80	13.89
12-21-56	S 41387	1.77	13.64	11.87
12-28-56	S 41488	7.42	24.61	17.19
12-12-56	S 41095	13.75	22.47	8.72
12-13-56	S 41138	12.38	22.47	10.09
12-14-56	S 41184	14.48	22.47	7.99
12-27-56	S 41456	13.75	20.83	7.08

* See explanation on pages 21 and 22 of Exhibit No. 21 herein.

It appears from the record and we find that respondent in all instances set forth above used an estimated weight of 2500 pounds per 1000 board feet in computing its charges. The staff in preparing its report (Exhibit No. 21) used the weights shown on the respondent's documents to compute the proper charges.

The Commission having considered the evidence of record and having found facts as above set forth, finds and concludes that

respondent Ray Schneyer Transportation Co. has received a lesser compensation for the transportation of freight than the applicable charges prescribed in Minimum Rate Tariff No. 2, in violation of Sections 3664, 3667 and 3737 of the Public Utilities Code. It will be required to collect the undercharges hereinabove found. In the future, respondent will be required to prepare and retain in its files for inspection by the Commission, shipping documents for each shipment conforming in all respects with Item 255 Series of Minimum Rate Tariff No. 2. The circumstances of record surrounding these violations do not appear to warrant the suspension of respondent's operating rights. Respondent will be directed to cease and desist from the collection of charges not authorized.

O R D E R

A public hearing having been held in the above-entitled matter, the Commission being fully advised in the premises and having made the findings and conclusions set forth above,

IT IS ORDERED:

(1) That Ray Schneyer Transportation Co. is hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion and to notify the Commission in writing upon the consummation of such collections.

(2) That in the event charges to be collected as provided in paragraph (1) of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, Ray Schneyer Transportation Co. 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.

(3) That in the future Ray Schneyer Transportation Co. shall prepare a shipping document in conformance with the requirements of Item 255 Series of Minimum Rate Tariff No. 2 for each shipment and shall retain a true copy thereof in its files for a period of three years.

(4) That Ray Schneyer Transportation Co. cease and desist from charging, demanding, collecting and receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2.

(5) That the Secretary of the Commission is directed to cause proper service of this order to be made on Ray Schneyer Transportation Co. and this order shall become effective twenty days after the date of such service.

Dated at San Francisco, California, this 25th day of MARCH, 1958.

 President
Paul L. Litterer

Walter G. Goble

Stephen Fox

 Commissioners