AG

Decision No. 56482

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 ALVES SERVICE TRANSPORTATION, INC., a California Corporation.	)	Case No. 5954

Berol & Silver by Bertram S. Silver, for respondents.
William Bricca and A. J. Lvon, for the Commission staff.

O P I N I O N

On July 15, 1957, the Commission issued an order instituting an investigation into the operations, rates, and practices of Alves Service Transportation, Inc. The purpose of the investigation was to determine whether respondent violated various provisions of the Commission's minimum rate tariffs and its own tariffs filed with the Commission.

Public hearings were held on September 11, 1957 and October 8, 1957 at San Francisco before Examiner William L. Cole. The matter was submitted subject to the filing of a late-filed exhibit. This exhibit has been filed and the matter is now ready for decision.

Facts

Based upon the evidence introduced into the record in this matter, the Commission hereby finds and concludes that the following facts exist:

1. That respondent has been issued a certificate of public convenience and necessity by this Commission to operate as a highway common carrier between the Los Angeles Territory and the two points in the City of Oakland hereinafter referred to; and that respondent has also been issued permits to operate as a radial highway common carrier, highway contract carrier, and as a city carrier.

2. That prior to the time of the shipments hereinafter referred to, respondent had been served with the applicable Commission tariffs and distance tables governing such shipments.

3. That prior to the time of the shipments hereinafter referred to, respondent had on file with the Commission, tariffs for shipments transported by it as a highway common carrier between the Los Angeles Territory and Oakland.

4. That during the period from April 20, 1956 to December 31, 1956, respondent transported 87 shipments, among others, of automobile and truck parts between the Los Angeles Territory and Oakland.

5. That the consignee of all of these 87 shipments was the Chevrolet Division of General Motors Corporation.

6. That the Chevrolet Division of General Motors Corporation has two plants located within the city limits of Oakland and that these two plants are located 2.8 miles apart.

7. That when the shipments in question left the Los Angeles Territory, the property shipped was consigned to but one point of destination, that point of destination being either one of the consignee's two plants in Oakland.

8. That the shipping orders for each of the 87 shipments, as originally issued, indicated thereon only one point of destination.

9. That no written instructions were issued with respect to the 87 shipments setting forth directions for handling any of these shipments as split delivery shipments.

10. That with respect to 86 of the 87 shipments, respondent's truck carrying the property shipped was driven to the plant to which it was consigned; that a portion of the property shipped was physically left at this plant; that consignee's employees at that plant receipted for the portion of the property left there; that consignee's employees then directed respondent's employee to deliver the balance of the property to the second plant; that respondent's employee delivered the balance of the property to the second plant; and that consignee's employees at the second plant receipted for the balance of the property delivered there.

11. That with respect to the 87th shipment, respondent's truck carrying the property shipped was driven to the plant to which

it was originally consigned; that consignee's employees directed respondent's truck driver to deliver all of the property shipped, to the second plant; that respondent's truck driver delivered all of the property to the second plant; and that consignee's employees at the second plant receipted for all of the property shipped.

12. That, with respect to each of the 87 shipments, respondent's employees, prior to reaching the first plant, did not know what part, if any, of the property shipped from the Los Angeles Territory, the consignee would direct to be sent on to the second plant.

13. That, with respect to each of the 87 shipments in question, respondent assessed its transportation charges on the basis that these shipments had a single point of origin in the Los Angeles Territory and a single point of destination in Oakland; and that such charges were based upon respondent's highway common carrier tariffs on file at the time the shipments took place.

14. That, with respect to the transportation in question, respondent did not prepare or issue any shipping documents indicating that it transported property between consignee's first plant and second plant; and that respondent did not assess any transportation charges for the transportation of property between these two points.

Positions of the Parties

With respect to 86 of the 87 shipments, it is the position of the Commission staff that those shipments whose charges were computed on weights of not less than 4,000 pounds, constituted split

delivery shipments[1] inasmuch as the property transported by each of these shipments was delivered to two different points of destination. The staff further contends that since no written instructions were issued relative to the split delivery aspect of these shipments, respondent's highway common carrier tariff requires that each of these shipments be treated as two separate shipments, one shipment having its point of origin in the Los Angeles Territory and its point of destination at consignee's first plant and the other having its point of origin in the Los Angeles Territory and its point of destination at consignee's second plant.[2] With respect to the

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[1] Item 10.3 of respondent's applicable highway common carrier tariff in effect at the time the shipments took place defines a "split delivery" shipment as: "Split delivery shipment means 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 transportation charges computed upon a weight of) not less than 4,000 pounds, said shipment being paid by the consignor when there is more than one consignee."

[2] Item 170-A of respondent's applicable highway common carrier tariff provides in part as follows:

"The rate for the transportation of a split delivery shipment shall be determined and applied as follows, subject to Note 1:

"......

"(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 the consignee, the 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.

"......"

shipments whose charges were computed on weights of less than 4,000 pounds, the staff contends that they do not come within the definition of split delivery shipments, but that inasmuch as the property transported by each of these shipments was delivered to two different points of destination, each of these shipments must be treated as two separate shipments in the same manner as described above. Inasmuch as respondent rated each of the 86 shipments as single shipments having one point of origin and one point of destination, the staff contends that respondent violated its highway common carrier tariff with respect to these 86 shipments.

Respondent on the other hand concedes that violations have been committed but disagrees with the staff as to the nature of the violations. Respondent maintains that the transportation that took place between the Los Angeles Territory and the first plant reached by respondent constituted a completed shipment having one point of origin and one point of destination and that the transportation charges assessed by respondent for this shipment as a highway common carrier were correct. Respondent contends further that when it was directed by consignee's employees to deliver a portion of the property from consignee's one plant to its other plant, a new and second shipment came into being. Inasmuch as this latter shipment was performed wholly within the city limits of Oakland, respondent contends that it was performed by respondent as a city carrier rather than as a highway common carrier. It is respondent's position that for this reason, the document and rate violations that were

committed were violations of the Commission's City Carriers' Tariff No. 2-A and not violations of respondent's highway common carrier tariff.

With respect to the 87th shipment, it appears from the record that both parties are in agreement that this constituted one shipment from the Los Angeles Territory to the first of consignee's two plants and then a second shipment from the first plant to the second plant and that the violations committed were violations of the provisions of City Carriers' Tariff No. 2-A.

Conclusions

There are no specific provisions in respondent's highway common carrier tariff which cover the situation described above with respect to these shipments. The definitions of "shipment"[3/], "split delivery shipment"[4/] and "point of destination"[5/] as set forth in respondent's highway common carrier tariff are not entirely determinative of the problem.

3/ Item 10.3 of respondent's applicable highway common carrier tariff defines "shipment" as: "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".

4/ See footnote No. 1.

5/ Item 10.1 of respondent's applicable highway common carrier tariff defines "point of destination" as follows:
"Point of destination means the precise location at which property is tendered for physical delivery into the custody of the consignee or his agent. All points within a single industrial plant or receiving area of one consignee shall be considered as one point of destination. An industrial plant or receiving area of one consignee shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare."

It appears from an analysis of the facts that the question to be answered is when each of the shipments leaving the Los Angeles Territory was completed. If the shipment was completed when respondent's truck reached the first of consignee's two plants, then respondent's position is the correct one because there would then be a shipment from one point of origin in Los Angeles to one point of destination in Oakland. The transportation of the balance of the property from the one plant to the other must then of necessity give rise to a second shipment. If, however, the shipment leaving Los Angeles was not completed until after respondent's truck reached the second of the consignee's two plants, the staff's position would be the correct one inasmuch as the shipment would then have two points of destination.

Again, there are no provisions in either respondent's highway common carrier tariff or the Commission's City Carriers' Tariff No. 2-A which entirely answer this question. However, it appears to the Commission that the consignee's employees at the first of the two plants, by physically taking a portion of the property and directing respondent to deliver the balance elsewhere, assumed control of the entire shipment. By so taking control at the first of the two plants, consignee's employees, in effect, accepted the entire shipment at that time and thereby effected delivery of the shipment at that time. Delivery having been made at that time, the shipment from Los Angeles was completed. It follows, therefore, that the transportation of a portion of the

property from the first plant to the second plant resulted in a new shipment.

Inasmuch as this second shipment took place entirely within the city limits of Oakland, this shipment was performed by respondent under the authority of its city carrier permit. Therefore, the shipment is governed by the provision of the Commission's City Carriers' Tariff No. 2-A. This tariff sets forth the various rates to be used in assessing the transportation charges for such intracity shipments. The tariff also requires that the carrier issue a shipping document to the shipper for each such intracity shipment, which document must set forth certain information. As has already been found, respondent did not issue such a document for any of the shipments in question between consignee's one plant and its other plant nor did respondent assess any transportation charges for such shipments.

Therefore, based upon the facts hereinabove found and the conclusions heretofore reached, the Commission hereby finds and concludes that respondent violated the Commission's City Carriers' Tariff No. 2-A and Section 4013 of the Public Utilities Code.

It is the Commission's conclusion that a reasonable penalty for the violations found is a five day suspension of respondent's city carrier permit. Because of the manner in which the intracity shipments took place, the exact weights of the property transported on these shipments were not introduced into

evidence. Respondent did introduce an exhibit into the record which set forth estimated weights of this property. Respondent will be ordered to collect the applicable charges for these shipments based upon such estimated weights. Respondent will be ordered to examine its records for the period from January 1, 1956 to the present time to ascertain if additional intracity shipments were made other than those hereinabove referred to, for which no charges were assessed by the respondent and to collect the charges for any such shipments. Respondent will also be ordered to cease and desist from such violations in the future.

During the course of the hearing, a motion was made to strike certain testimony from the record, which motion was taken under submission. This motion is hereby denied.

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 Alves Service Transportation, Inc., is ordered to cease and desist from future violations of City Carriers' Tariff No. 2-A.

2. That the city carrier permit issued by this Commission to Alves Service Transportation, Inc., be and it hereby is suspended

for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date hereof.

3. That Alves Service Transportation, Inc., shall post at its terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public that its aforementioned operating authority has been suspended by the Commission for a period of five days.

4. That Alves Service Transportation, Inc., shall examine its records for the period from January 1, 1956 to the present time to ascertain if additional intracity shipments were made other than those hereinabove referred to, for which no charges were assessed by the respondent.

5. That Alves Service Transportation, Inc., is hereby directed to take such action as may be necessary to collect the applicable charges for the intracity shipments referred to in the above opinion together with the charges for any shipments found after the examination required by paragraph 4 of the order, and to notify the Commission in writing upon the consummation of such collection.

6. That in the event charges to be collected as provided in paragraph 5 of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, Alves Service Transportation, 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.

7. That the Secretary of the Commission is directed to cause personal service of this order upon Alves Service Transportation, Inc., and this order shall be effective twenty days after the completion of such service.

Dated at San Francisco, California, this 8th day of APRIL, 1958.

President

Commissioners