

ORIGINAL

Decision No. 56683

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into)
the rates, rules, regulations, charges,)
allowances and practices of all common)
carriers, highway carriers and city)
carriers relating to the transportation)
of sand, rock, gravel and related items)
(commodities for which rates are provided)
in Minimum Rate Tariff No. 7).

Case No. 5437
Petitions for
Modifications Nos. 36 and 37

(Appearances are listed in Appendix A)

O P I N I O N

Petition No. 36 filed by the California Dump Truck Owners Association seeks the re-establishment of "double factor" hourly rates in Minimum Rate Tariff No. 7 for Northern Territory. Petition No. 37 filed by the California Trucking Associations, Inc., seeks the establishment of "double factor" hourly rates in Southern Territory.^{1/}

Public hearing was held in Petition No. 36 on October 15, 1957. On motion made at that hearing, the Commission in its Decision No. 55859 dated November 19, 1957, ordered the consolidation of proceedings in Petition No. 36 and Petition No. 37 for the limited purpose of receiving evidence and argument on the preliminary question of whether "double factor" minimum hourly rates should be established for the transportation of commodities by dump truck in Northern Territory, in Southern Territory, or in both territories. Pending

^{1/} "Double factor" rates are defined in Decision No. 52952, Case No. 5437, 55 Cal. P.U.C. 2. Southern Territory means the Counties of Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside, San Bernardino, Inyo and Mono. Northern Territory includes all counties other than those named above.

decision on the preliminary question, the Commission, by interim order in Decision No. 56180 in Petition No. 36, increased the "single factor" hourly rate in Northern Territory by amounts which would offset known increases in drivers' wages.

Public hearings were held in this consolidated proceeding before Examiner Jack E. Thompson on March 19, 1958 at San Francisco and on March 25 and 26, 1958 at Los Angeles. Evidence was adduced concerning current conditions in the transportation of commodities subject to the provisions of Minimum Rate Tariff No. 7; interested parties made known their positions on the question and argument was given regarding the merits and disadvantages of "double factor" rates and of "single factor" rates.

Minimum hourly rates for the transportation of sand, rock, gravel, excavating material and road building material were first established, on a statewide basis, by the Commission in its Decision No. 28274, dated October 9, 1935.^{2/} The rates so established were "double factor" rates; the order provided for minimum rates per hour for various sizes of trucks to which was to be added,

"the actual or computed wages paid for a driver, but in no case less than the general prevailing rate per hour for work of a similar character in the locality in which the work is performed. The term "general prevailing rate per hour" shall be understood to mean that rate which has last been found to be the general prevailing rate in the particular locality by the Department of Public Works of the Division of Highways, State of California, as established under the provisions of Chapter 397, Statutes of 1931, as amended."

There was an exception under which the rates of wages fixed by the Federal Government, State, County or other political subdivision, to be paid drivers on work performed by or on behalf of them, would apply on such transportation. With very small modification, "double factor" rates of this type continued to be the minimum hourly rates

^{2/} Case No. 4076, 39 C.R.C. 402.

for dump truck transportation throughout the State until January 15, 1955, when, pursuant to Decision No. 50854, the hourly rates in Southern Territory were converted to a "single factor" basis. The "double factor" basis continued in effect in Northern Territory until April 24, 1956 when "single factor" hourly rates were made effective by Decision No. 52952. In that decision the Commission stated:

"A review of Item No. 340 of the minimum rate tariff, together with the statutory provisions to which reference is made therein (Chapter 397, Statute-1931), and the testimony of record in this proceeding, is convincing that the requirements for the determination of the wage factors of the minimum rates in question are vague and complicated and are not being observed by many, if not all, dump truck operators."

In 1953, Section 1773.6 was added to the California Labor Code. It provides as follows:

"Determination of general prevailing rates: Filing: Finalty: Notice of change. Where the body awarding the contract or authorizing the public work is the State Department of Public Works or any division thereof, it shall file, quarterly, its determination of general prevailing rates of per diem wages for those localities in which public work is to be performed, in the Office of the Director of Industrial Relations, commencing not later than January 10, 1954. Such determination shall be final except as hereinafter provided. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall immediately notify the awarding body of such change and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published. (Added by Stats 1953 ch 1706 6.)"

A principal highway engineer prepares the determination by the Department of Public Works of the general prevailing rates of per diem wages of dump truck drivers for various localities in the State of California. He testified in proceedings in Petition No. 36, that with respect to Northern Territory, the prevailing wages as determined are, except for provisions regarding premium pay for drivers of "double headers", the same as those set forth in the terms of

contracts between the teamsters unions and the Associated General Contractors of America. Contract wage rates are commonly known as the A.G.C. scales. The principal highway engineer stated that the determinations are made and are filed with the Director of Industrial Relations at least quarterly and that he, personally with the assistance of his subordinates, maintains a close watch on the wage level in the dump truck industry so that whenever it appears that there is a change during any quarterly period a new determination of the prevailing wage is made and is filed with the Director of Industrial Relations without delay.

The filings are made at the San Francisco office of the Department of Industrial Relations and are open to public inspection at that office but not elsewhere in the State.

The evidence in this proceeding shows that the A.G.C. scale of wages is the actual wage required under labor contracts to be paid to drivers of dump trucks engaged in transportation subject to the rate in Minimum Rate Tariff No. 7 for Northern Territory in that virtually all carriers operating in Northern Territory are parties to contracts with the teamsters unions which provide for the A.G.C. scale. The presently established minimum rates for Northern Territory reflect this circumstance in that the tariff prescribes different minimum rates for several districts in Northern Territory and those districts conform to the areas in which different wage scales are provided under the A.G.C. contracts.

In Southern Territory, the prevailing wage per diem determined by the Department of Public Works and filed with the Director of Industrial Relations corresponds to the A.G.C. scale for that territory. This scale, however, is not the scale of wages paid drivers of dump trucks for all transportation subject to Minimum Rate Tariff No. 7. From the evidence, it appears that the A.G.C. scale

is applicable in dump truck transportation involving excavating jobs, road building and heavy construction. In the transportation of sand, rock and gravel from commercial producing plants, it appears that the drivers of trucks are paid pursuant to terms of a contract entered into by the Southern California Rock Products Association and the Teamsters Union. The terms of this contract have provisions respecting straight-time pay, overtime and fringe benefits which are different from those prescribed in the A.G.C. contracts.

While the substantial portion of the transportation of sand, rock and gravel from commercial producing plants moves under zone rates prescribed in the minimum rate tariff, it appears that the hourly minimum rates are applied to some of this transportation. The secretary of the Southern California Rock Products Association testified that reasonable hourly rates are necessary for its members in the marketing of their products.

The Proposals

The California Dump Truck Owners Association proposed that for Northern Territory there be established rates in the tariff for equipment without driver which rates would be similar in form to those prescribed prior to Decision No. 52942. To these rates would be required to be added the prevailing wage rate currently determined by the State Department of Public Works and filed with the Director of Industrial Relations pursuant to Section 1773.6 of the California Labor Code.

Following testimony of a rate expert of the Commission's staff pointing out administrative difficulties of this proposal, the California Trucking Associations suggested, as an alternate method of prescribing "double factor" hourly rates, that the Commission in Minimum Rate Tariff No. 7 establish an equipment factor as proposed

above and a wage factor which the Commission determine to be prevailing and appropriate.

Positions of the Parties

The California Dump Truck Owners Association advocates "double factor" rates in the form it proposes for Northern Territory. It did not endorse the alternate proposal of the California Trucking Associations for Northern Territory and it opposes the establishment of "double factor" rates in Southern Territory. The California Trucking Associations, Inc., endorses the establishment of "double factor" rates for both Northern and Southern Territories in the form proposed by the California Dump Truck Owners Association. As an alternative it suggests the method whereby both the equipment factor and the wage factor would be set forth in the tariff and takes the position that the form of the minimum hourly rates should be uniform in both Northern and Southern Territories.

It appears that the respondents in this proceeding almost uniformly desire "double factor" rates in Northern Territory. In Southern Territory those engaged principally in transportation involving excavation and road building advocate "double factor" rates, whereas, generally speaking, those engaged in hauling aggregates for the commercial producing plants prefer the present "single factor" rate structure.

The Northern and Central Chapters of the Associated General Contractors and the Highway and Building Construction Teamsters Committee of Northern California supported the establishment of "double factor" rates in Northern Territory. They did not take a position regarding the hourly rates in Southern Territory.

Permanente Cement Co. opposed the establishment of "double factor" rates.

Southern California Asphalt Plant Association and Southern California Rock Products Association opposed the establishment of "double factor" rates in Southern Territory.

The Transportation Division of the Commission does not favor the establishment of "double factor" rates.

Conclusions

The establishment of "double factor" rates in Northern Territory has the overwhelming support of almost all segments of the industry. Such a rate structure has a number of advantages which the parties deem very important; the rates will reflect wage increases automatically and without delay and the rates will reflect actual overtime pay to drivers for work performed beyond eight hours and not provide for overtime when the trucks are on "double shift". The present "single factor" rates for Northern Territory include an increment covering average overtime pay for work performed beyond eight hours but do not return to the carrier in all cases the actual cost of the overtime pay.

Disadvantages of "double factor" rates were described by a rate expert of the Commission's staff. Many of the disadvantages described relate to added difficulties of administration and enforcement. There are insurmountable problems in the establishment of "double factor" rates as proposed by the California Dump Truck Owners Association. The determination of the prevailing wages would, in part, be a determination of the minimum reasonable rates for the transportation of property. The Commission cannot delegate its power to establish or approve minimum rates. Secondly, while the prevailing wage is filed with the Director of Industrial Relations, it does not appear that it is published, nor does it appear that notice is given to carriers when changes are made in the prevailing wages determined

pursuant to Section 1773.6 of the Labor Code. A tariff provision providing that the wage factor shall be determined from the filings made with the Director of Industrial Relations may constitute notice to the respondents of the minimum rates in effect; however, whether the requiring of all carriers to make certain of the proper wage factor is an obligation that can reasonably be imposed by the Commission is questionable in light of the frequency of transactions in dump truck transportation and the fact that actual knowledge of the wage factor could only be secured from the San Francisco office of the Director of Industrial Relations. In the circumstances, the Commission is of the opinion that the minimum hourly rates in the form proposed by the California Dump Truck Owners Association would not be suitable or proper.

The alternative proposed by the California Trucking Associations, Inc., would not present the problems stated above. There appears to be no absolute reason why a rate structure of that type should not be established. On the other hand, it would not provide the automatic adjustment of minimum rates desired by the parties with changes in the level of wages. Actually, the only reason for the establishment of such a rate structure would be the desire of the parties affected by the minimum rates that it be done.

With respect to Northern Territory, the California Dump Truck Owners Association, which is seeking the establishment of "double factor" rates in Northern Territory in Petition No. 36, did not advocate the proposal of the California Trucking Associations, Inc.

In Southern Territory there are two scales of drivers' wages; one appears to be the prevailing scale in construction work and the other prevailing in the transportation of sand, rock and gravel

from commercial producing plants. The Commission does not have before it a specific proposal setting forth the rates sought under the alternative suggested by petitioner in Petition No. 37. It is also apparent that "double factor" rates for Southern Territory are not favored by all segments of the industry.

A rate expert of the Commission's staff testified that, in his opinion, each time a petition is filed seeking adjustments in the minimum rates to reflect known changes in wage costs, a showing should be required regarding all of the other costs involved in transportation by dump truck. It was the testimony of petitioners that such a showing is an unwarranted burden and the time required to prepare for such a showing results in delays between the time wages are changed to the time adjustments in minimum rates become effective. This is one of the principal reasons for the seeking of the establishment of "double factor" rates. That the Commission does not wholly subscribe to the opinion expressed by the expert is evident from its actions in Decision No. 56413 dated March 25, 1958 in Petition No. 42 in this case and in Decision No. 56180 dated January 28, 1958 in Petition No. 36 herein.

The proposal of petitioner in Petition No. 36 for the establishment of "double factor" rates in Northern Territory is not suitable or proper for minimum rates for the transportation of commodities in dump trucks.

Petitioner in Petition No. 37, in seeking the establishment of "double factor" rates for Southern Territory, requested that "a consistent and appropriate tariff provision for statewide application be determined". As stated above, the only valid reason for establishing "double factor" hourly rates in the form suggested in petitioner's alternate proposal is the desire of all segments of the public affected

by the minimum rates that this be done. The alternative proposal was opposed by the California Dump Truck Owners Association and two associations of shippers.

The petitions for the establishment of "double factor" hourly minimum rates will be denied. The interim order in Decision No. 56180 in Petition No. 36 will be made final.

O R D E R

Based on the evidence of record and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

1. That the interim order in Decision No. 56180, dated January 28, 1958, in Petition No. 36 herein is hereby made final.
2. That in all other respects, Petitions Nos. 36 and 37 are hereby denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of May, 1958.

[Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

List of Appearances

E. O. Blackman, for California Dump Truck Owners Association, Petitioner in Petition No. 36.

J. C. Kaspar, J. X. Quintrall, and Arlo D. Poe, for California Trucking Associations, Inc., Petitioner in Petition No. 37.

Johnson and Stanton, by Thos. E. Stanton, Jr., and John Gibson, for Northern California Chapter and Central California Chapter of the Associated General Contractors of America; Robert Le Prohn and Harry Pollard, for the Heavy Highway and Building Construction Teamsters Committee of Northern California; Warren P. Marsden and E. J. Saldine, for State of California, Department of Public Works, Division of Highways; Russell Bevans, for Draymen's Association of San Francisco; Mrs. Marjorie Black and Royston E. Campbell, for Basalt Rock Co.; S. A. Moore and Bert Ferre, for Permanente Cement Co.; Eugene R. Booker, for Rock, Sand and Gravel Producers of Northern California and Northern California Ready Mixed Concrete & Materials Association; Edgar D. Robertson, for Southern California Asphalt Plant Association; and Austin H. Peck, Jr., for Southern California Rock Products Association, Interested Parties.

Mrs. W. W. Cuffman, Les Calkins, Loren V. Cooper, Tony Crisalli, Robert Dick, L. S. Earls, E. E. Einboden, C. L. Freeman, Richard H. Gear, Gerald Lingenfelter, Clair V. Logue, W. D. Nichols, E. R. Otte, C. S. Percy, A. W. Porter, S. M. Porter, Brady Shute, James K. Tracy and W. G. Tumbley, in propria persona or for various trucking companies, Respondents.

J. R. Laurie, N. Haley, G. L. Malquist, J. P. Merrick and J. B. Nance, for the Commission staff.