

ORIGINAL

Decision No. 56821

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's) own motion into the operations, rates, and practices of M and M LIVESTOCK TRANSPORTATION, INC., a Nevada corporation.

Case No. 6051

Willard S. Johnson, for the respondent.
Bert Buzzini, for the California Farm Bureau Federation, interested party.
Martin J. Porter, for the Commission's staff.

O P I N I O N

On February 4, 1958, the Commission issued an order of investigation on its own motion into the operation, rates and practices of M and M Livestock Transportation, Inc., for the purpose of ascertaining:

1. Whether respondent violated Section 494 of the Public Utilities Code by charging, demanding, collecting or receiving a different compensation for highway common carrier services than the applicable rates and charges specified in its schedules of rates and charges filed with the Commission and in effect during the period January 1, 1957 to June 15, 1957.

2. Whether respondent violated the Public Utilities Code by failing to adhere to various provisions and requirements of respondent's tariff on file with the Commission.

A public hearing was held on March 21, 1958, at San Francisco before Examiner William L. Cole, at which time the matter was submitted.

Facts

Based upon the evidence introduced at this hearing, the Commission hereby finds that the following facts exist:

1. During the time the shipments hereinafter referred to took place, respondent was operating as a highway common carrier of

livestock pursuant to a certificate of public convenience and necessity issued by the Commission. During this period of time there was also in force a radial highway common carrier permit issued to respondent by the Commission, which permit is restricted to the transportation of agricultural commodities.

2. During the period of time the shipments hereinafter referred to took place, respondent had on file with the Commission its highway common carrier tariff covering the transportation of livestock.

3. During the period from February, 1957, through June, 1957, respondent, as a highway common carrier, transported eight shipments of livestock, among others, from various points of origin in California to various points of destination in California for various shippers. Certain charges were assessed by respondent for these shipments. At the time of the hearing, respondent and the Commission staff entered into an agreement as to what the correct charges for these shipments should have been under respondent's tariff. The charges actually assessed by the respondent and the correct charges for these shipments as agreed to by the respondent and the Commission staff are set forth in the following table:

<u>Freight Bill Number</u>	<u>Charge Assessed by Carrier</u>	<u>Correct Charge</u>
4660	\$328.62	\$334.01
5091	64.85	74.78
5160	97.61	132.56
5288	157.28	160.53
5118	514.76	564.54
5362	855.60	862.41
6940	121.06	124.65
4805	441.76 ^{1/}	481.42

4. During April and May, 1957, respondent, as a highway common carrier, transported three other shipments of livestock from

^{1/} Respondent originally assessed and collected \$481.42 for this transportation but later refunded to the shipper \$39.66.

points of origin in California to points of destination in California. All of these three shipments were consigned to a slaughterhouse, feed lot, or packing house. The livestock transported on each of the three shipments was weighed at the point of destination but respondent did not obtain a certified weighmaster's certificate for any of the shipments. One of the shipments in question was transported on a Sunday and the remaining two shipments were delivered to their points of destination during the evening or at night. The charges assessed by the carrier were based on the weights obtained.

5. On two different occasions during March, 1957, respondent, as a highway common carrier, transported shipments of livestock between points in California. Respondent assessed the shippers the correct charges under its tariff for the transportation of these shipments. Subsequent to the transportation of each shipment, a claim was filed against the respondent by the respective shipper for damages resulting from injuries sustained by the livestock during the course of the transportation. Respondent honored these claims and paid to the respective shippers the amount claimed by them as damages. The agreement for carriage entered into between respondent and the shipper of each shipment provides in part:

"It is mutually agreed that every service to be performed and every liability incurred in connection with said shipment shall be subject to the conditions on back hereof, which are agreed to by the Shipper and accepted for himself and his assigns."

The reverse side of the agreement contains the following provision:

"e. Unless written notice of loss or damage is given to a carrier before or at the time the shipment is unloaded at point of destination, the carrier will be discharged from all liability in respect to any claim for loss and damage."

No written notice of loss or damage was given to respondent before or at the time either of the shipments was unloaded at its respective point of destination. With respect to one of the shipments, no

representative of the shipper or consignee was present when the shipment was unloaded at destination.

6. During the first six months of 1957, when all of the shipments hereinabove took place, respondent issued 752 freight bills covering 1,529 loads. Respondent has 17 units of equipment.

Nonobservance of Minimum Weights

As hereinabove indicated in paragraph 3, respondent and the Commission's staff entered into an agreement as to the correct charges with respect to the eight shipments referred to therein. Inasmuch as the correct charges for each of these shipments exceeded the charges actually assessed by the carrier, it is the Commission's conclusion, based upon the facts found in paragraph 3, that respondent violated Section 494 of the Public Utilities Code by charging and demanding a different compensation for the transportation of livestock than the applicable rates and charges specified in its tariffs filed with the Commission which were in effect when the shipments took place. The undercharges for these eight shipments totalled \$193.11.

The evidence indicates that these undercharges resulted because respondent used truckload rates but failed to protect the truckload minimum weights. Under respondent's tariffs these truckload minimum weights are determined by the type and number of units of equipment used on each shipment.^{2/} With respect to the eight shipments in question, the size of each shipment was such that more than one unit of equipment was needed.

On five of the eight shipments respondent assessed its charges on the basis of the actual weight of livestock transported.

^{2/} In speaking of truckload minimum weights, respondent's tariff provides:

"For single equipment units the minimum weight shall be 14,000 pounds for cattle and hogs and 12,000 pounds for sheep; for two units in combination the minimum weight shall be 30,000 pounds for cattle and hogs and 25,000 pounds for sheep."

This weight exceeded the sum of the minimum weights for each unit of equipment. With respect to each shipment, however, the livestock transported on at least one unit of equipment weighed less than the truckload minimum weight for that unit of equipment. Consequently, respondent should have added the difference between the actual weight transported on that unit of equipment and its minimum weight to the total weight of the entire shipment. This the respondent did not do.

On the three remaining shipments respondent used truckload weights calculated on the basis of the number of units ordered by the shipper rather than on the number of units actually used in the transportation.

Lack of Certified Weighmaster's Certificates

Respondent's tariff provides that on shipments transported to or from packing houses, slaughterhouses or feed lots charges shall be assessed on the gross weight of the shipment as evidenced by a certified weighmaster's certificate. This provision was inserted in respondent's tariff in accordance with the order of this Commission in Decision No. 31924, as amended. As hereinabove indicated in paragraph 4, respondent transported three shipments destined to a packing house, a slaughterhouse or a feed lot, for which it did not obtain a certified weighmaster's certificate. Therefore, based upon the facts hereinabove found in paragraph 4, it is the Commission's conclusion with respect to these three shipments that respondent violated this provision of its tariff and, consequently, that respondent violated Section 494 of the Public Utilities Code.

It should be noted, however, as hereinabove found, that respondent did obtain the actual weights of the livestock transported on these three shipments, and that respondent assessed its transportation charges based upon such weights and that the shipments took place either on a Sunday or during the night.

Payment of Claims

With respect to the two shipments hereinabove referred to in paragraph 5, the facts as found show that respondent honored two claims for damages to livestock during the course of transportation by it. Respondent's tariff, as filed with the Commission during the period of time when these shipments took place, provided that respondent shall not remit payment on loss or damage claims unless such claims are presented to the carrier in accordance with the terms of the contract of carriage. As hereinabove found in paragraph 5, the contract of carriage entered into between the shippers in question and respondent provided that, unless written notice of loss or damage is given to a carrier before or at the time the shipment is unloaded at point of destination, the carrier will be discharged from all liability with respect to any claim for loss or damage. As previously found, such a written notice was not presented to respondent before or at the time either of the shipments was unloaded at its respective point of destination. Whether or not actual damage occurred with respect to the livestock transported on these shipments was not a fact in issue in this proceeding inasmuch as it was the position of the Commission staff that respondent should not have honored the claims since the required notice was not given.

At the hearing, respondent maintained in effect that, notwithstanding its tariff provisions, it could not enter into a contract which would completely exonerate it from liability for negligent injury to the goods carried. This position appears to be correct. However, the courts of this State have held that contracts which set a time limit when claims must be presented to a carrier do not fall into this category and, therefore, are a legitimate subject for contract. It is the Commission's opinion that the claim

provision of the contract in question comes within this latter classification. Again, respondent was required to insert the provision in question in its tariff and also the provision in question in its contract of carriage, pursuant to the Commission's order in Decision No. 31924, as amended. Therefore, inasmuch as respondent honored these claims without obtaining the required written notice, it is the Commission's conclusion that respondent violated Section 494 of the Public Utilities Code. The two claims in question totalled \$130.00.

Conclusions

The Commission has concluded that respondent has violated Section 494 of the Public Utilities Code. The respondent will be ordered to cease and desist from future violations of these sections. The respondent will also be ordered to collect the undercharges hereinabove found and to examine its records for the period from January 1, 1956, to the present time to ascertain if any additional undercharges have occurred and to collect any such undercharges. In addition, respondent's certificate of public convenience and necessity to operate as a highway common carrier and its permit to operate as a radial highway common carrier will be suspended for a period of two days. This suspension is based primarily on the minimum weight violations hereinabove found.

At the time of the hearing, a motion was made to amend the order of investigation, 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 M and M Livestock Transportation, Inc., is hereby ordered to cease and desist from all future violations of Section 494 of the Public Utilities Code.

(2) That the certificate of public convenience and necessity issued by this Commission authorizing M and M Livestock Transportation, Inc., to operate as a highway common carrier and its permit to operate as a radial highway common carrier are hereby suspended for a period of two days commencing at 12:01 a.m. on the second Monday following the effective date hereof.

(3) That M and M Livestock Transportation, Inc., shall post at its terminal and station facilities, on not less than five days prior to the beginning of the suspension period, a notice to the public stating that the operating authority hereinabove mentioned has been suspended for a period of two days.

(4) That M and M Livestock Transportation, Inc., shall examine its records for the period from January 1, 1956, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

(5) That M and M Livestock Transportation, Inc., is hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion, together with any additional undercharges found after the examination required by paragraph 4 of this order, and to notify the Commission in writing upon the consummation of such collections.

(6) That in the event charges to be collected as provided in paragraph 5 of this order, or any part thereof, remain uncollected ninety days after the effective date of this order, M and M 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) The Secretary of the Commission is directed to cause personal service of this order to be made upon M and M Transportation, Inc., and this order shall be effective twenty days after such service.

Dated at San Francisco, California, this 9th day of June, 1958.

John H. Mitchell
President

Edwin Fox

Theodore Jensen

Commissioners

Ray E. Untereiner
Commissioner J. Matthew J. Dapley being necessarily absent, did not participate in the disposition of this proceeding.