

ORIGINAL

Decision No. 56960

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, )  
rates, and practices of ABLE )  
TRANSPORTATION, a California )  
corporation. }

Case No. 6042

Joseph S. Ennes, Jr., for respondent.

Franklin G. Campbell, for the Commission staff.

Kasch & Cook by Leo M. Cook, for Brad Shear,  
interested party.

O P I N I O N

On January 21, 1958 this Commission issued an order of investigation into the operations, rates and practices of Able Transportation, a California corporation, which is engaged in the business of transporting property over the public highways as a radial highway common carrier. Respondent requested and was granted by the Commission a voluntary one-year suspension of this permit on December 13, 1957. The purpose of this investigation is to determine whether the respondent has acted in violation of Sections 3664, 3667 and 3668 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed by the Commission's Minimum Rate Tariff No. 2 (dealing with general commodities).

Public hearings were held on April 1 and April 28, 1958 at San Jose before Examiner James F. Mastoris, at which time evidence was presented and the matter was duly submitted.

At the time of hearing, representatives of the Commission's Rate Branch and Field Section testified on behalf of the Commission staff; Mr. Joseph Ennes, president of said corporation, testified on his own behalf and on behalf of the respondent carrier. From the facts produced by the staff, there appear to have been numerous violations of said Minimum Rate Tariff No. 2. The staff's evidence discloses that in October 1956 the respondent entered into a written contract of employment with Mr. Brad Shear of Hopland, California, an interested party to this investigation, whereby Mr. Shear was employed as a general manager of the company. Said contract provided for the payment of a salary and one-third of the net profits to said manager. Under the terms of this arrangement Mr. Shear maintained his offices at Hopland and conducted the company's trucking business from said offices. After this contract became effective this carrier commenced hauling lumber from the Standard Lumber Mills, a shipper located near Santa Cruz. As a result of this transportation, certain alleged tariff violations came to the attention of the Commission and an informal investigation was instituted. During the course of this investigation Mr. Odis Ray, the accountant for the company, delivered to the Commission's investigator certain shipping documents mailed to him by Mr. Shear during the course of the carrier's business.<sup>1/</sup> These documents presumably covered shipments of lumber carried by Able Transportation for Standard Lumber Mills during the months of June, July and August, 1957.

A study of the shipper's records, however, disclosed no copies of the above freight documents but instead there appeared copies of what the staff alleged to be a different set of freight bills.<sup>2/</sup> The staff maintains that the freight documents obtained from

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<sup>1/</sup> Exhibit 2.

<sup>2/</sup> Exhibit 1.

Mr. Ray were falsified shipping documents, not the originals, and thus in violation of Section 3668 of the Public Utilities Code. It was contended that Mr. Shear, after receiving the original bills from the subhauler, would make out what purported to be an original master bill of lading, illegally consolidating shipments and disregarding off-rail rates, and then forward said bills to the accountant in San Jose for presentation and payment. Evidence was presented showing that 11 consolidated shipments allegedly prepared by the Hopland office were actually 25 shipments of lumber with undercharges totaling \$820.39.

Further evidence indicated that, when the subhauler for this carrier would pick up a shipment from Standard Lumber Mills, a shipping clerk for the mill would prepare an Able Transportation freight bill for each load and give it to said subhauler, together with a Standard Lumber Mills' manifest, describing the shipment in detail and where it was to be delivered. After making delivery the subhauler testified that the original freight bills were sent by mail to Mr. Shear in Hopland. Additional evidence disclosed that copies of freight bills matching those found at the shipper's offices were later discovered by Mr. Ennes at the Hopland office in back of the office lying in what purported to be a waste paper box. Mr. Ennes turned over these documents to the Commission. The staff alleges that Mr. Shear was the only person who had any motive to falsify freight documents, especially in view of the provisions of the employment contract.

Mr. Ennes, the president of the respondent, denied any knowledge of the above activities declaring that if any improper activities occurred in the Hopland office such were without his permission or authorization. His primary function was to manage the

financial affairs of the corporation; he alleged he took no part in the operational conduct of the business. He declared that Mr. Shear's contract was terminated after the staff's investigation was instigated.

After careful examination of the above facts it is our opinion that there is no evidence to associate Mr. Ennes with these violations. His participation in the business was nominal; he maintained his office in San Jose, played no part in the active operation and management of the company other than the aforementioned financial support.

An analysis of the two sets of freight documents shows a marked discrepancy between the two in many particulars. The bills prepared by the Hopland office were clearly prepared after the transportation was performed. They were typewritten, completed in detail, with a master bill consolidating two and in some cases three shipments. The shipper's records were handwritten with different freight bill numbers, in many cases different dates, and with no information regarding the points of destination and the name of the consignee. Someone gathered the information from the original bills and prepared the documents eventually sent to the head office in San Jose for payment. If the testimony of the subhauler is correct, and there is no dispute on this, and the originals were filled out as indicated, some person in Hopland consolidated the shipments in violation of Item 60-B of Minimum Rate Tariff No. 2. No direct evidence was offered; however, the circumstances reasonably imply that Mr. Shear participated in or was responsible for the preparation of the typewritten documents. Mr. Shear refused to testify on his own behalf. We do not have sufficient evidence, however, to clearly say that such preparation was done with the deliberate intent to knowingly falsify the documents and violate the law. The facts imply

only that the violations can be traced to the office of which Mr. Shear had the responsibility and control. The fact that copies of the freight bills matching the copies found at the shipper's office were found in a cardboard box in back of the Hopland office is not controlling in view of the fact that it is not clear that this receptacle containing the documents was in fact a disposal container or that the copies were being destroyed or secreted. They were not altered, torn or mutilated. The finding of these copies, in view of all other circumstances, may draw an inference of false billing practices but not substantial evidence thereof. The presence of a high-salaried bookkeeper in the Hopland office with a large measure of influence over billing procedures indicates that more than one person had access to and control over the disputed freight documents. Moreover, a close analysis of the documents prepared by the Hopland office reveals an interpretation of billing procedures consistent with a mistake in applying the rules of the tariff.

Based upon the above and other evidence, the Commission hereby finds and concludes as follows:

1. During the period from June through August 1957, Able Transportation operated as a radial highway common carrier pursuant to a permit issued by the Commission.

2. During this period of time, respondent had in its possession the Commission's Minimum Rate Tariff No. 2, together with all supplements and additions thereto.

3. During this period of time, respondent transported certain shipments of lumber, receiving a lesser compensation for the transportation of this commodity than the applicable charges prescribed by the Commission's Minimum Rate Tariff No. 2.

4. Based upon the foregoing, the Commission hereby finds and concludes that respondent violated Sections 3664 and 3667 of the Public Utilities Code.

Although Mr. Shear may have been responsible for the actual undercharges that occurred, the respondent, in its corporate capacity, must suffer the consequences of the errors and mistakes of its employees and agents. This corporation was grossly negligent in permitting its operations to be managed in the manner described by the evidence. Accordingly, respondent's radial highway common carrier permit will be suspended for a period of six months. Such suspension commences upon the termination of the present voluntary suspension which may be concluded either by respondent's appropriately reinstating its permit or by the expiration of such voluntary suspension on December 12, 1958, whichever date is first in time. Moreover, respondent will also be directed to examine its records from May 1, 1957 to the present time in order to determine if any additional undercharges have occurred and to file with the Commission a report setting forth the additional undercharges, if any, it has found. Respondent will also be directed to collect any such additional undercharges.

O R D E R

Public hearings having been held in the above entitled matter and the Commission being fully informed therein, now, therefore,

IT IS ORDERED:

1. That radial highway common carrier permit No. 43-4737 issued to Able Transportation is suspended for a period of six months, said suspension to commence upon termination of the present voluntary suspension either by respondent's properly reinstating said permit or by expiration of said voluntary suspension on December 12, 1958, whichever date first arrives.

2. That Able Transportation shall examine its records for the period May 1, 1957 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

3. That, within ninety days after the effective date of this decision, Able Transportation shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 2.

4. That Able Transportation 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 2 of this order, and to notify the Commission in writing upon the consummation of 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 120 days after the effective date of this order, Able Transportation 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 this Commission.

6. The Secretary of the Commission is directed to cause personal service of this order to be made upon the president of the respondent, Mr. Joseph S. Ennes, Jr., and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 8<sup>th</sup> day of July, 1958.

Joseph S. Ennes, Jr. President  
John G. Mitchell  
Joseph S. Ennes, Jr.  
William J. Ennes