

Decision No. 57074**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 PANDA)
 TERMINALS OF CALIFORNIA, INC.)

Case No. 6038

Glanz & Russell by Theodore W. Russell, for
 respondent.
Glenn H. Jones, for Freight Transport Co.;
Russell Bevans, for Draymen's Association
 of San Francisco, Inc.; Fred H. Yelkes, for
 Clipper Carloading Company; Oliver Austin, Jr.,
 for Austin Draying Company; and Myland Hinman,
 for Haslett Warehouse Company, interested
 parties.
Elmer J. Sjostrom and George T. Kataoko, for the
 Commission staff.

OPINION AND ORDER

On January 14, 1958, the Commission issued an order insti-
 tuting an investigation on its own motion into the operations, rates
 and practices of Panda Terminals of California, Inc. This investi-
 gation was instituted for the purpose of determining:

1. Whether the respondent violated Section 3701 of the Public
 Utilities Code by failing to keep within this State all books,
 accounts, papers and records required by the Commission to be kept
 within this State, and by failing to make available to the Commission
 information which the Commission requested and deemed necessary.

2. Whether respondent violated Sections 3705 and 3706 of the
 Code by failing to give to the authorized employees of the Commission
 access to and the right to inspect and examine all accounts, records
 and memoranda, including all documents, books, papers and corres-
 pondence kept or required to be kept by highway permit carriers.

3. Whether respondent violated Sections 4045 and 4046 of the Code by failing to give to the authorized employees of the Commission access to and the right to inspect and examine all accounts, records and memoranda, including all documents, books, papers and correspondence kept or required to be kept by city carriers.

4. Whether the respondent violated Section 3668 of the Public Utilities Code, by means of known false billing or any other device, in permitting a corporation or person to obtain transportation for property between points within this State at rates less than the minimum rates established or approved by the Commission.

Public hearings were held on February 20, 1958, at Los Angeles and on May 6, 1958, at Oakland, before Examiner William L. Cole. On May 6, 1958 the matter was submitted.

Facts

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

1. On November 3, 1953, respondent was issued permits to operate as a radial highway common carrier, highway contract carrier and city carrier. These permits have remained in force up to the present time.

2. Respondent is a corporation whose head office is located in Chicago, Illinois. Respondent has two offices located in California, one in Oakland and one in Los Angeles.

3. Respondent's operations consist of the assembling and distributing of carload freight. It operates in approximately thirty states of the United States and employs approximately 75 people altogether and approximately 50 persons in the State of California.

4. On April 6, 1957, respondent transported certain intercity and intracity shipments of ironing tables and laundry carts between San Francisco, on the one hand, and San Francisco, Oakland, or

San Jose, on the other hand. The shipper of these shipments was the Sunbeam Corporation.

5. During the period of July 2, 1957 through July 9, 1957, a representative of the Commission conducted an investigation of respondent's operations at its Oakland office. In the course of his investigation, this representative asked for the freight bills of respondent which would show the rates and charges assessed by the respondent for the shipments hereinabove referred to. There were copies of freight bills relative to these shipments at the Oakland office but the rates and charges assessed were not shown on these copies.

6. The Commission's representative was told by respondent's representatives at its Oakland office that the freight bills which did show the rates and charges assessed were maintained at respondent's head office in Chicago, Illinois. The Commission's representative requested that these freight bills be sent for in order that he might complete his investigation.

7. On numerous occasions from the time of this investigation in July until September 3, 1957, the Commission's representative inquired of respondent's Oakland representatives as to whether the requested freight bills had arrived from Chicago. On each of those occasions, the Commission's representative was informed that they had not as yet arrived.

8. On September 3, 1957, respondent's Oakland representative notified the Commission's representative that the requested freight bills had arrived from Chicago.

9. An examination of the freight bills by the Commission's representative indicated differences between these freight bills and the copies of the freight bills at the respondent's Oakland office

regarding these shipments. On September 6, 1957, the Commission's representative pointed out these differences to the respondent's representatives in Oakland and renewed his request for the copies of the freight bills concerning these shipments, which showed the rates and charges assessed by respondent and which matched the copies that the Commission's representative had seen in respondent's Oakland office.

10. During the remainder of the month of September, 1957 and the first part of October, 1957, the Commission's representative further contacted respondent's Oakland representatives relative to the freight bills in question and was advised that they had not as yet arrived from Chicago.

11. The evidence indicates with respect to the shipments in question, that respondent had prepared and sent to the shipper an original set of freight bills at the time the shipments took place. Copies of this set of freight bills were maintained at respondent's Oakland office and were the records the Commission's representative examined at the time of his original investigation. At some later time, a second and different set of freight bills covering the same shipments was prepared by respondent and sent to the shipper. It was the copies of this second set of freight bills that were given to the Commission's representative on September 3, 1957.

12. Copies of the first set of freight bills prepared by respondent, showing the rates and charges first assessed by it, were delivered to the Commission on May 6, 1958, at the time of the second hearing in this matter.

13. The total of the charges assessed by the respondent on the first set of freight bills sent to the shipper exceeded the total of the charges assessed on the second set by \$6.51.

14. In January, 1958, a refund was sent to the shipper by the respondent in the amount of \$6.51.

15. In November, 1957, respondent sent all of its records relative to California intrastate shipments handled since September 1, 1957, to its offices in California.

Access to Records

Sections 3705 and 4045 of the Public Utilities Code dealing with highway permit carriers and city carriers, respectively, provide in part that the Commission or its authorized employees, representatives, or inspectors shall at all times have access to all accounts, records, and memoranda, including all documents, papers and correspondence kept or required by the Commission to be kept by such carriers. There is no question but that copies of freight bills and shipping documents which show the rates and charges assessed by a carrier constitute records required to be kept by the carrier.^{1/}

It appears clear that the Legislature, in using the phrase "shall at all times have access to all accounts, records, and memoranda, kept or required to be kept by highway permit carriers." intended that the items referred to shall be made available to the Commission or its representatives for inspection and that they shall be made available within a reasonable time and at a reasonable place. It is the Commission's opinion that the delay in making the requested records available in the present case was not reasonable. In view of this and based upon the facts hereinabove found, it is the Commission's conclusion that respondent violated Sections 3705 and 4045 of the Code in that the Commission's representative was not given access to the records in question within a reasonable time.

^{1/} Item 255-C of Minimum Rate Tariff No. 2 and Item 205 of City Carriers' Tariff No. 1-A require the issuance of a shipping document for each shipment received, which document must show the rate and charge assessed. These items further require that a copy of each shipping document shall be retained and preserved by the issuing carrier, subject to the Commission's inspection, for a period of not less than three years from the date of its issuance.

Keeping Records Within State

As previously indicated, this investigation was also instituted for the purpose of determining whether respondent violated Section 3701 of the Code. This section, in so far as it is pertinent here, provides that each highway permit carrier maintaining an office or place of business within this State and offering intrastate service shall keep therein all books, accounts, papers, and records "required by the Commission to be kept within this State" and that no such books, accounts, papers, or records shall be at any time removed from the State. These provisions were enacted by the Legislature in 1957 and became effective on September 11, 1957. We have found no rules or regulations of the Commission which as yet specifically require the records in question to be kept within this State. For this reason, we cannot pass upon what effect these new provisions have upon the records in question.

Rate Violations

At the time of the hearings, the Commission staff indicated that it was not undertaking to present evidence on the question of whether respondent had violated Section 3668 of the Code relative to assessing rates less than the minimum rates established by the Commission and that this phase of the proceeding could be dismissed.

Conclusions

As hereinabove indicated, it is the Commission's conclusion that respondent violated Sections 3705 and 4045 of the Public Utilities Code. The Commission considers this a serious offense inasmuch as these and similar provisions concerning the accessibility and availability to the Commission's representatives of carriers' records and documents constitute the cornerstone of rate regulation enforcement. To relax its insistence on strict adherence to these provisions would make rate enforcement, already a difficult task,

that much more difficult. For this reason, respondent's permits will be suspended for a period of two days. Respondent will also be ordered to maintain copies of shipping documents which show the rates and charges assessed by it on all intrastate shipments, within the State of California.

Motion

At the time the Commission staff rested its case, respondent made a motion to amend the order of investigation by deleting therefrom any reference to possible violations of Sections 3701 and 3668 of the Public Utilities Code. This motion was taken under submission. In view of the foregoing opinion there is no reason to pass on this motion.

O R D E R

A public hearing having been held and the Commission being fully informed therein, now, therefore,

IT IS ORDERED that:

1. The Radial Highway Common Carrier Permit, Highway Contract Carrier Permit, and City Carrier Permit of Panda Terminals of California, inc., be and they hereby are suspended for a period of two consecutive days commencing at 12:01 a.m. on the second Monday following the effective date hereof.

2. Panda Terminals of California, 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 stating that its Radial Highway Common Carrier Permit, Highway Contract Carrier Permit, and City Carrier Permit have been suspended by the Commission for a period of two days.

3. Panda Terminals of California, Inc., shall maintain copies of its shipping documents which show the rates and charges assessed by it on all intrastate shipments, within the State of California.

4. The Secretary of the Commission is directed to cause personal service of this order to be made upon Panda Terminals of California, Inc., and this order shall be effective twenty days after the completion of such service.

Dated at San Francisco, California, this 29th day of July, 1958.

E. L. Fox
President
John E. Mitchell
Paula L. L. L. L.
Thomas J. Jenner
Commissioners

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.