

Decision No. 57596**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)
 IWALANI H. CASALETTO, LARRY) Case No. 6077
 JOSEPH CIRAULO, MARIO DI FIORE,)
 DON DI TULLIO, JOHN FERREIRA,)
 HOMER HENARD, ROY D. RHODES,)
 TAKEO TSURUMOTO.)

John B. Brethauer and Stanley M. Behr, for the
 respondents.

Elmer Sjoström, for the Commission staff.

O P I N I O N

On March 25, 1958, the Commission issued an order of investigation into the operations, rates, and practices of Iwalani H. Casaletto, Larry Joseph Ciraulo, Mario Di Fiore, Don Di Tullio, John Ferreira, Homer Henard, Roy D. Rhodes and Takeo Tsurumoto. This investigation was instituted for the purpose of determining whether respondents violated Section 3737 of the Public Utilities Code by failing to adhere to the requirements of the Commission's Minimum Rate Tariff No. 7 and also whether the respondents have violated the Commission's General Order No. 102 by failing to file with the Commission the bond therein required to be filed.

Public hearings were held on May 21, 1958 and June 23, 1958 at San Jose, before Examiner William L. Cole. The matter was submitted on June 23, 1958.

Facts

Based upon the evidence in the record, the Commission hereby makes the following findings and conclusions:

1. That, prior to the time of the transportation hereinafter referred to, all of the respondents had been issued radial highway

common carrier permits by this Commission which have been in force until the present time.

2. That, with the exception of respondents Di Tullio and Rhodes, all of the other respondents were served with the Commission's Minimum Rate Tariff No. 7 prior to the time of the transportation hereinafter referred to.

3. That, prior to September 1, 1957, all of the respondents had been served with a copy of the Commission's General Order No. 102.

4. That, during the month of September 1957, all of the respondents transported certain shipments of fill for the Santa Clara Sand and Gravel Company.

5. That the points of origin for all of the shipments in question were located in a creek bed in the San Jose area. Each shipment of earth fill was not picked up at precisely the same point. A power vehicle was cleaning the creek bed for storm control. The earth was being removed and hauled away by the respondents. The Commission infers from this that the shipments in question were not from a commercial producing plant which is defined in Minimum Rate Tariff No. 7 as the point at which sand or gravel is washed and sorted as to size and grade and placed into stockpiles or bunkers, and/or where stone is crushed and graded and placed into stockpiles or bunkers. The Commission also infers that these shipments of earth fill were not from a railhead which is defined as a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from, rail cars or vessels. Likewise, the Commission infers that these shipments were not from a distributing yard which is defined in Tariff No. 7 as an area for storage of rock, sand, gravel, or cold road oil mixture in piles, bins, silos or bunkers.

6. That the point of destination for all of the shipments of earth fill was located at Rosa Street and Guadalupe Canal in the

City of San Jose at the job site of the construction of the new Juvenile Hall. The Commission infers from these facts that the shipments were not to a cement, ceramic, or glass factory or to a distributing yard or railhead as defined in Tariff No. 7. The Commission also infers that the shipments were not to a hot plant which is defined in Tariff No. 7 as a fixed installation for the heating of road oil or asphalt and the mixing of such heated oil or asphalt with rock, sand and any other ingredients to produce cold road oil mixture or asphaltic concrete.

7. That the charges assessed by the respondents Casaletto, Ciraulo, Di Fiore, Ferreira, Henard, and Tsurumoto for the transportation in question were calculated on the basis of certain specified rates per ton of fill transported. The charges assessed by these respondents were not collected by them from the Santa Clara Sand and Gravel Company at the end of each shipment. Rather, a record was kept whereby the charges were accumulated as credits to the respective respondents. Periodically, the Santa Clara Sand and Gravel Company paid to the individual respondents the total amount shown as being credited to him at that particular time.

8. That, with respect to the shipping documents maintained by the respondents Casaletto, Ciraulo, Di Fiore, Ferreira, Henard, and Tsurumoto for the shipments in question, there was not shown thereon the water-level capacity in cubic yards for each unit of equipment used or the type of loading for each unit of equipment. The time of reporting for service or the time of completion of service was likewise not shown on some of the shipping documents in question of respondents Casaletto, Ciraulo, Di Fiore, Ferreira, and Henard.

9. That, in performing the transportation in question, each of the respondents used hopper bottom dump trailers which each of the respondents rented from the Santa Clara Sand and Gravel Company.

These trailers were rented by the respondents from the Santa Clara Sand and Gravel Company from the late Spring of 1957 until November 1, 1957. During the month of September 1957, the period within which the shipments in question took place, the trailers were rented pursuant to an oral arrangement between each respondent and the Santa Clara Sand and Gravel Company. The monthly amount of the rent charged to each respondent was equal to one-third of the gross revenue earned by that respondent during that month.

10. That, during the month of September 1957, the Santa Clara Sand and Gravel Company reduced the amounts due each respondent for the transportation in question by the amount of the rental due from each respective respondent for the trailers for that month.

11. That neither prior to nor during the month of September 1957 had any of the respondents filed a bond with the Commission to secure the payment of claims of their lessors.

12. That, during August 1957, a representative of the Commission had conferences with all of the respondents, at which time he informed them that they were required to file bonds with the Commission if they rented equipment, and they were also informed that they were not reflecting on their shipping documents certain information as prescribed by Minimum Rate Tariff No. 7.

Violations of the Commission's Minimum Rate Tariff No. 7

The Commission's Minimum Rate Tariff No. 7 provides for the use of two different methods of calculating transportation charges for the transportation of property in dump truck equipment in the San Jose area. One method is based upon the use of a rate in cents per ton of material transported. The other method is based upon so-called hourly rates or the use of a rate in cents per hour of service devoted by the carrier to the shipper. With respect to the transportation of earth fill, however, the tariff requires that the

carrier apply the so-called hourly rates unless the shipment is from a commercial producing plant, a railhead, or a distributing yard, or to a cement, ceramic, or glass factory, a hot plant, a distributing yard, or a railhead.

Item 47-B of the tariff requires that "Rates or accessorial charges shall not be quoted or assessed by carriers based upon a unit of measurement different from that in which the minimum rates and charges in this tariff are stated." It might be argued that, inasmuch as Tariff No. 7 provides for two units of measurement, either may be used by a carrier without violating this item. However, it appears that the intent with which the item was adopted was that carriers should not assess charges based upon a unit of measurement different from that in which the minimum rates and charges in this tariff are stated for the type of shipments being rated. It is the Commission's conclusion that such is the proper interpretation of this item.

In view of the findings and conclusions heretofore made with respect to the shipments in question, it is apparent that the tariff requires that the charges for these shipments be based upon hourly rates. As hereinabove found, however, the respondents Casaletto, Ciraulo, Di Fiore, Ferreira, Henard, and Tsurumoto calculated their charges for these shipments based upon a rate in cents per ton transported. Therefore, it is the Commission's conclusion that these respondents violated Item 47-B of the tariff.

Item 93-A of Minimum Rate Tariff No. 7 requires, with respect to transportation in the San Jose area, which is subject to the tariff's hourly rates, that the carrier shall issue to the shipper for each engagement for transportation a shipping document which shall show the following information:

- (1) Name of shipper.
- (2) Address at which shipper is to be billed.

- (3) Description of the property to be transported.
- (4) Water-level capacity in cubic yards of each unit of equipment to be supplied.
- (5) Type of loading (bunker, power, hand or other).
- (6) Point at which each unit of equipment is to begin its engagement for transportation each day.
- (7) Time of reporting for service of each unit of equipment each calendar day.
- (8) Time of completion of service of each unit of equipment each calendar day.
- (9) Detailed list for each unit of equipment each day of time deductible from the elapsed time between (7) and (8) above, including the reason for such deduction.
- (10) The net time after deduction of (9) from the elapsed time between (7) and (8) for each unit of equipment each calendar day.
- (11) The rate and charge assessed, including a detail of all bridge or ferry tolls assessable.

It is apparent from the facts and conclusions hereinabove reached that the respondents Casaletto, Ciraulo, Di Fiore, Ferreira, Henard, and Tsurumoto did not comply with this item of the tariff with respect to the transportation in question.

In view of the foregoing and based on the facts hereinabove found, the Commission hereby finds and concludes that the respondents Casaletto, Ciraulo, Di Fiore, Ferreira, Henard, and Tsurumoto violated Minimum Rate Tariff No. 7, and, therefore, that they violated Section 3737 of the Public Utilities Code. Inasmuch as there was no evidence relative to the service of Minimum Rate Tariff No. 7 on the respondents Di Tullio and Rhodes, the Commission makes no finding with respect to violations of these two respondents.

Violations of the Commission's General Order No. 102

The Commission's General Order No. 102, which was in effect during September 1957, provides that no radial highway common carrier or highway contract carrier shall engage any subhauler or lease any equipment as a lessee unless and until it has on file with the Commission a good and sufficient bond in such form as the Commission may deem proper, in a sum of not less than five thousand dollars, which bond shall secure the payment of claims of subhaulers and lessors of highway carriers. The general order defines "lease" as

a contract by which any person, firm or corporation, who or which owns, controls, or is entitled to the possession of any vehicle or vehicles of the types described in Section 3510 of the Public Utilities Code, lets or hires the same to any carrier subject to the provisions of the general order for the purpose of having such vehicle or vehicles used in the for-hire transportation business of such lessee.

Section 3510 of the Public Utilities Code states:

"'Motor vehicle' means every motor truck, tractor, or other self-propelled vehicle used for transportation of property over the public highways, otherwise than upon fixed rails or tracks, and any trailer, semitrailer, dolly, or other vehicle drawn thereby."

Based upon the evidence in the record, the Commission hereby finds and concludes that all of the respondents violated General Order No. 102 by not filing with the Commission the bond required by the general order.

Conclusions

With respect to respondents Casaletto, Ciraulo, Di Fiore, Ferreira, Henard, and Tsurumoto, the Commission has found that they violated Section 3737 of the Public Utilities Code and have also violated the Commission's General Order No. 102. It is the Commission's conclusion that their operating permits should be suspended for a period of three days.

With respect to respondents Di Tullio and Rhodes, the Commission has found that they have violated the Commission's General Order No. 102. Their operating permits will be suspended for a period of two days.

Motions

At the conclusion of the Commission's case, the respondents made a motion to dismiss the investigation. This motion has been denied. During the course of the hearing, the respondents made several motions to strike certain testimony of various witnesses for

various reasons. At that time, these motions were taken under submission. Some of these motions were subsequently ruled on. The motions remaining are hereby denied.

O R D E R

Public hearings having been held herein, the matter having been submitted, and the Commission basing its decision on the findings and conclusions hereinabove set forth,

IT IS ORDERED that:

1. The radial highway common carrier permits issued to Iwalani H. Casaletto, Larry Joseph Ciraulo, Mario Di Fiore, John Ferreira, Homer Henard, and Takeo Tsurumoto are hereby suspended for a period of three days, commencing at 12:01 a.m. on the second Monday following the effective date hereof. ✓

2. The radial highway common carrier permits issued to Roy D. Rhodes and Don Di Tullio 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. Iwalani H. Casaletto, Larry Joseph Ciraulo, Mario Di Fiore, John Ferreira, Homer Henard, and Takeo Tsurumoto shall post at their 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 their radial highway common carrier permits have been suspended by the Commission for a period of three days. ✓

4. Roy D. Rhodes and Don Di Tullio shall post at their 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 their radial highway common carrier permits have been suspended by the Commission for a period of two days.

5. The Secretary of the Commission is directed to cause personal service of this order to be made upon Iwalani H. Casaletto, Larry Joseph Cirauro, Mario Di Fiore, John Ferreira, Homer Henard, Takeo Tsurumoto, Roy D. Rhodes and Don Di Tullio, and this order shall be effective twenty days after the completion of such service upon all of the respondents.

Dated at San Francisco, California, this 10th day of November, 1958.

[Signature]
President
[Signature]
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Commissioners