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ORIGINAL

Decision No. 57717.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of Sacramento Freight Lines, a California corporation.	Case No. 6031

Berol & Silver, by Bertram S. Silver, for respondent.
Carl F. Breidenstein, for California Packing Corporation, interested party.
Martin J. Porter, for the Commission staff.

O P I N I O N

On December 30, 1957 the Commission issued an order instituting an investigation into the operations, rates and practices of Sacramento Freight Lines, a California corporation. The purpose of the investigation was to determine whether respondent violated certain provisions of the Commission's minimum rate tariffs and its own tariffs filed with the Commission. This carrier operates as a highway common carrier and also under various permits issued to it by the Commission.

Public hearings were held on June 2, July 1, 3 and 10, 1958, at which times evidence was presented by the Commission's staff and by the respondent.

Staff's Evidence

The Commission's staff contends, and offered in evidence in support thereof, that this carrier improperly rated various shipments of general commodities moving between various northern California cities, on the one hand, and certain points in the Los Angeles and San Diego areas, on the other hand. It is alleged that the respondent violated Section 494 of the Public Utilities Code by charging and

receiving a different compensation for its services than the applicable rates and charges specified in its tariffs on file with the Commission and in effect during the period from August 1956 to and including July 1957. In addition, the staff also alleges that the respondent was in violation of the minimum rate tariffs in effect because it charged and received a lesser amount than the appropriate minimum charges provided by said tariffs.

Twelve shipments moved by this carrier are involved; five were transported for shipper California Packing Corporation, San Francisco, (Exhibits Nos. 3 to 7), three for Armstrong Cork Company, South Gate, (Exhibits Nos. 9 to 11), three for Campbell Soup Company, Sacramento, (Exhibits Nos. 12 to 14), and one for U.S. Growers Cold Storage, Los Angeles, (Exhibit No. 15). However, the major portion of all the hearings was devoted to evidence presented on the five California Packing Corporation shipments, hereinafter referred to as the Cal-Pac shipments.

It is the staff's position that the respondent ignored and violated its own tariff by adding certain "consolidation charges" on to a basic line-haul charge between certain San Francisco-East Bay area points and Los Angeles with the result that certain undercharges and overcharges occurred. These additional consolidation charges, labeled on the face of the shipping orders as "min. switch" and "stop in transit", are alleged to be not authorized by this carrier's tariff and thus should not have been applied. These charges generally amounted to $14.75 for the switch and $12.90 for the stop in transit; they varied in number from two (Exhibit No. 4) to four (Exhibit No. 3) per transaction. In addition, the staff says that a rate of 33 cents per 100 pounds subject to a minimum weight of 80,000 pounds,

and limited in application between a single origin at railhead and a single destination at railhead was not applicable to the shipments in question but that a rate of 43 cents per 100 pounds, minimum weight 30,000 pounds, which included split pickup and delivery services, was applicable. (Item 1450 of Carrier's Tariff) It further contends that Sacramento Freight Lines does not have certificated authority to serve Northridge (Los Angeles County) and consequently two freight bills (Exhibits Nos. 5 and 6) showing transportation for this shipper to said point were incorrect and should have been rated under the carrier's permitted authority.

The staff, largely through the testimony of its expert rate witness, declares that the face of the Cal-Pac documents shows that the freight apparently was picked up at various plants of the shipper in the San Francisco Bay Area (Alameda, Oakland, Fruitvale, San Jose) as split pickups and transported to southern California under the aforementioned 33-cent over-the-road rate. The staff contends that split pickup rules and rates applied and that the freight bills should be rerated accordingly. This was done and the purported correct tariff rate was testified to by the staff's expert witness and incorporated into a written "rate statement" (Exhibit No. 8) offered into evidence.

Position of Respondent

The respondent justifies its use of the aforementioned "consolidation charges" upon the ground that the local San Francisco Bay Area pickup movement could have been made under its operating permits covering the East Bay points. Said permitted authority is controlled by City Carriers Tariff 2-A (East Bay). This tariff contains a provision (Item 110) which enables a trucker to use the alternative rail rate provisions if such provisions result in a

lower rate than the tariff's rates. It is contended, in effect, that such provision permitting use of the rail rate also permits use of all the rules and regulations of the rail tariffs--among which is the switching charge referred to--in order to cover local pickup movements. Therefore, as the use of the rail tariff switching charges would have been lawful under its permits the East Bay local movement charge shown on the documents was proper. It was conceded there is no so-called "switching tariff" in the respondent's own tariff.

The foregoing method of rating was justified upon the premise that (1) there is nothing in the carrier's tariffs or the Commission's minimum rate tariffs that prohibits it and (2) that had two carriers been utilized--one to make the local drayage pickups and the other to transport the goods over the road from the consolidation point to Los Angeles--there would have been no doubt that the charges would have been proper if separate documents were issued to cover the separate movements. However, it is alleged that utilizing two carriers with physical consolidation at one point would be a senseless and objectionable transportation practice because of the many practical and operating difficulties of unloading one truck and loading another. Therefore, in order to avoid using two carriers and actual physical consolidation the whole transaction is treated as if a local pickup had been made by one carrier, brought to a consolidation point where the aggregate is then transported to southern California.

It is contended that if the foregoing method is improper it is only so because the documentation covering the purported local pickups is improper, not because there has been incorrect rating. Respondent declares that placing consolidation charges on the same

document with the line-haul charge may constitute a violation, but, if so, it is the only violation involved. Moreover, if the trucker is permitted to use the rules, regulations and rates under the alternate rail provisions of the City Carriers Tariff 2-A, logically they should be permitted to adopt the rail practices as well. And, it is contended, the railroads frequently consolidate switching charges and line-haul charges on one document. Furthermore, the respondent points out that combining the local movement charges and the line-haul charges on one document is not specifically prohibited by its own tariffs or the minimum rate tariffs. Lastly, the respondent claims that upon analysis the various and assorted supporting documents constituting the binder folio of each Cal-Pac shipment are sufficient documentation of the local shipments and thus meet the separate document requirement.

If it is assumed, without conceding, that separate documents should have been issued to account for the purported local movements the carrier claims it would have been faced with the purposeless and absurd procedure of issuing a document for a nonexistent shipment for service not performed. The result of such a practice would cause serious upheaval in the trucking industry. Therefore, the carrier argues, the Commission should not require the issuance of such documents under such circumstances when to do so would do violence to orthodox and traditional customs and practices of the transportation business.

The balance of the staff's case, excluding the Cal-Pac shipments, was not challenged by the respondent's evidence. It did claim that it was authorized to serve San Diego under the "3-mile" provisions of Section 1063 of the Public Utilities Code. Therefore,

Exhibit No. 14 was correctly rated under its certificated operating authority. It is alleged the same code section also governs Cal-Pac's Northridge shipments.

A substantial segment of the respondent's case consisted of testimonial and documentary evidence which indicated the probable financial effect on the operations of the carrier should its operating rights be suspended as a result of violations found in this case. As of March 31, 1958, the respondent's balance sheet shows a current liability of over $340,000 and a deficit of $7,047.52 (Exhibit No. 16). In the first six months of 1958 it lost over $15,000. If a five-day suspension of its certificate were imposed it would lose over $2,400 in fixed equipment obligations and $6,100 in total fixed obligations; 126 employees would be laid off with the resultant loss in salaries to them of over $12,500; the company would retain 12 employees paying them approximately $1,662. It is expected that it would lose approximately $33,000 gross revenue for a week's suspension, based upon first quarter figures (Exhibit No. 17). It is costing the respondent between $2,000 to $2,500 to defend this action before the Commission.

The evidence further shows that from August 1, 1956 to July 31, 1957 the respondent handled some 60,000 shipments with an average of approximately 236 per working day; during this one-year period 311 shipments were handled for Cal-Pac, 64 for Armstrong Cork and 764 for Campbell Soup. Of all the shipments moved the carrier points out that only two hundredths of one percent are assailed by the staff in this proceeding and 1.1 percent on the shipments hauled for the shippers involved. It is contended such statistics disclose that the errors, if any, were not deliberate and that basically the

carrier rates the vast majority of its shipments accurately and correctly. There was no evidence to show that the carrier deliberately intended to undermine its own tariffs or the Commission's minimum rate tariffs.

Conclusions

The evidence shows that the shipments from Cal-Pac's various plants to Los Angeles were billed as split pickup shipments. The evidence also shows that all component parts of each such shipment were not picked up in a single day. The carrier's tariff provides, among other things, that the parts of a shipment must be received in one day to constitute a split pickup shipment. Its tariff (Items 190 and 380) is analogous to the language of the rules and regulations of the Commission's minimum rate tariffs as to the split pickup definition, consequence and regulations.[1/] The Commission staff has consistently held that these split pickup rules and regulations clearly state that all component parts must be picked up in one day in order that split pickup treatment be given. The staff's position has always been that unless picked up on one day, all component parts must be treated as separate shipments and thus rated separately. We agree. However, in this proceeding the staff has proceeded as if split pickup treatment is proper even though the lots were picked up on different days. This we cannot accept.

This leads us to the respondent's theory of rating. As indicated it is unique, yet ostensibly logical in scope. By using its permitted authority along with its certificate this theory takes care of the vexatious problem of rating multiple lot pickups--especially with a large shipper with multiple plants who can

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1/ Minimum Rate Tariff No. 2, Items 11, 60, 160
City Carriers Tariff 2-A, Items 11, 240.

ordinarily provide a full truckload shipment at each pickup point. By utilizing this theory the various shipments can be treated as one large shipment at the applicable lower rate. The shipper is only too happy to pay for so-called "switching charges" because they are substantially lower than the rate that would apply if each shipment were rated separately. In fact, the switching charges could, on occasion, be lower than the split pickup charges. Therefore, this theory gives the carrier the alternative of using the switching charges or its own split pickup charges, whichever is lower. Because it is alleged it could be done with two separate carriers or one carrier issuing separate documents the respondent reasons that the theory is appropriate to cover the facts of this case. We disagree.

These shipments were misrated because the carrier's tariff did not provide for such rating. There is nothing in the respondent's tariff that enables the carrier to go to its permitted rights for authorization to include "consolidation charges" on the line-haul movement.

But the respondent contends that there is nothing in the tariff that prohibits such rating. In fact, it is claimed there is no prohibition in any tariff against this theory nor against the manner of documenting these shipments. This argument, however, overlooks the nature of tariff schedules filed with a state regulatory commission.

It is not the question of whether the tariff prohibits the method of rating utilized that controls; it is, on the other hand, whether the tariff authorizes it. The tariff filed by a highway common carrier is not a limitation of power but rather a grant of it. In other words, the carrier can only do that which is specifically authorized by the tariff schedule.

Section 1063 of the Public Utilities Code provides, in part, as follows:

> "No such certificate shall be required of any highway common carrier...for the performance of pickup, delivery, or transfer services by such carrier within such carrier's lawfully published pickup and delivery zones insofar as such pickup and delivery limits do not include territory in excess of three miles from the corporate limits of any city or three miles from the post office of any unincorporated point. ..."

The respondent's certificate includes the Los Angeles Territory, as defined in Item 270-3 of Minimum Rate Tariff No. 2. The right to serve Northridge under its certificate is not authorized because, (1) the carrier cannot serve intermediate points between the San Francisco and Los Angeles Territories, (2) the City of Northridge is beyond three miles from the boundary of the Los Angeles Territory, and (3) the above code section speaks of three miles from the corporate limits of a city--not from a territory authorized to be served by the carrier.

The extension provided by this section is confined to additional pickup and delivery service in connection with the certificated operation. The carrier cannot use this section to perform additional local service within the pickup and delivery zones. In East Bay Pick-Up & Delivery Limits (1948) 48 CRC 348, 350, the Commission said:

> "The distinguishing characteristic of pickup and delivery service is the carrier's receipt and delivery of the freight at the establishments of the consignor and the consignee ..."

This service is to be distinguished from the line-haul operations between points designated in the carrier's certificates. Section 1063 merely extends the area in the vicinity of a carrier's terminal

within which freight may be accepted or delivered at a shipper's or receiver's establishment. We find nothing in respondent's tariff's published pickup and delivery zones (Items 450 to 850) that would permit service to the City of San Diego, as an extension under the above rulings, based upon the right to serve the Marine Corps Base and Naval Installation, San Diego.

In view of the foregoing conclusion, it is not necessary to discuss the arguments relative to the propriety of the documentation used. Respondent's contentions as to improper service of minimum rate tariff additions and supplements are untenable. It stipulated to the necessary foundation for introduction into evidence of Exhibits Nos. 1 and 2. The additions and supplements did not substantially change the basic items and sections involved in this case. We can find no material prejudice to the carrier.

We find, therefore, that the evidence shows that (1) the Cal-Pac shipments in question were improperly rated by the respondent because it misapplied its tariff; (2) that under respondent's tariff the component parts of each such shipment should be rated as a separate shipment and (3) that the other shipments should have been rated as contended for by the staff. The following table sets forth our conclusions concerning the correct charges that should have been assessed and the resulting undercharges and overcharges. This tabulated schedule includes all the shipments involved in this proceeding; it is not limited to the Cal-Pac shipments.

Freight Bill No. OA-0880 of August 6, 1956, destination Los Angeles (Cal-Pac Shipment):

446 Cs. Ex. Alameda Plant #48; 9,520 lbs. as min.	10,000 lbs. @ (1) 70¢=	$ 70.00
	(2) 8% Surcharge=	5.60
		$ 75.60
737 Cs. Ex. Oakland Plant #43; 24,883 lbs. as min.	30,000 lbs. @ (3) 43¢=	$129.00
	(2) 7% Surcharge=	9.03
		$138.03
460 Cs. Ex. Fruitvale Plant #24; 8,380 lbs. as min.	10,000 lbs. @ (1) 70¢=	$ 70.00
	(2) 8% Surcharge=	5.60
		$ 75.60
744 Cs. Ex. Fruitvale Plant #37;	30,504 lbs. @ (3) 43¢=	$131.17
	(2) 7% Surcharge=	9.18
		$140.35
415 Cs. Ex. San Jose Plant #3;	11,518 lbs. @ (1) 70¢=	$ 80.63
	(2) 8% Surcharge=	6.45
		$ 87.08
	Total of 5 Shipments	$516.66
	Charge Assessed by Respondent	337.01
	Undercharge	$179.65

Freight Bill No. OA-2392 of June 3, 1957, destination Los Angeles (Cal-Pac Shipment):

1250 Cs. Ex. Fruitvale Plant #26; 45,000 lbs. as min.	50,000 lbs. @ 38¢=	$190.00
2262 Cs. Ex. Alameda Plant #48; 64,391 lbs.	@ 38¢=	$244.69
	Total of 2 Shipments	$434.69
	Charge Assessed by Respondent	376.29
	Undercharge	$ 58.40

Freight Bill No. OA-2397 of June 4, 1957, destination Northridge (Cal-Pac Shipment):

475 Cs. Ex. Fruitvale Plant #24;	14,725 lbs. @ (1) 70¢=	$103.08
	(2) 8% Surcharge=	8.25
		$111.33
1671 Cs. Ex. Alameda Plant #48;	59,186 lbs. @ (3) 38¢=	$224.91
282 Cs. Ex. San Jose Plant #39; 8,396 lbs. as min.	10,000 lbs. @ (1) 70¢=	$ 70.00
	(2) 8% Surcharge=	5.60
		$ 75.60
522 Cs. Ex. San Jose Plant #3;	22,320 lbs. @ (4) 57¢=	$127.22
	(2) 7% Surcharge=	8.91
		$136.13
	Total of 4 Shipments	$547.97
	Charge Assessed by Respondent	374.60
	Undercharge	$173.37

Freight Bill No. OA-2404 of June 13, 1957, destination Northridge (Cal-Pac Shipment):

1060 Cs. Ex. Alameda Plant #48;	33,265 lbs. @ (1) 43¢=	$143.04
	(2) 7% Surcharge=	10.01
		$153.05
1199 Cs. Ex. Fruitvale Plant #26;	43,079 lbs. @ (1) 43¢=	$185.24
	(2) 7% Surcharge=	12.97
		$198.21
499 Cs. Ex. San Jose Plant #39;	14,948 lbs. @ (3) 70¢=	$104.64
	(2) 8% Surcharge=	8.37
		$113.01
737 Cs. Ex. San Jose Plant #3;	30,236 lbs. @ (1) 43¢=	$130.01
	(2) 7% Surcharge=	9.10
		$139.11
	Total of 4 Shipments	$603.38
	Charge Assessed by Respondent	431.59
	Undercharge	$171.79

Freight Bill No. OA-2410 of June 19, 1957, destination Los Angeles (Cal-Pac Shipment):

850 Cs. Ex. Alameda Plant #48; 26,025 lbs. as min.	30,000 lbs. @ (1) 43¢=	$129.00
	(2) 7% Surcharge=	9.03
		$138.03
1480 Cs. Ex. Fruitvale Plant #26; 48,800 lbs. as min.	50,000 lbs. @ (3) 38¢=	$190.00
385 Cs. Ex. San Jose Plant #39;	10,890 lbs. @ (4) 70¢=	$ 76.23
	(2) 8% Surcharge=	6.10
		$ 82.33
750 Cs. Ex. San Jose Plant #3;	32,400 lbs. @ (1) 43¢=	$139.32
	(2) 7% Surcharge=	9.75
		$149.07
	Total of 4 Shipments	$559.43
	Charge Assessed by Respondent	419.61
	Undercharge	$139.82

Freight Bill No. L-76018 dated May 21, 1957, origin, South Gate, destination, Sacramento (Armstrong Cork Co.):

Tariff Charge	$242.04
Charge Assessed by Respondent	222.99
Undercharge	$ 19.05

Freight Bill No. L-84400 dated July 22, 1957, origin, South Gate, destination, Sacramento (Armstrong Cork Co.):

Tariff Charge	$324.80
Charge Assessed by Respondent	273.10
Undercharge	$ 51.70

Freight Bill No. L-85649, dated July 30, 1957, origin South Gate, destination, Sacramento (Armstrong Cork Co.):

Tariff Charge	$210.33
Charge Assessed by Respondent	186.64
Undercharge	$ 23.69

Freight Bill No. S-10243, dated June 19, 1957, origin Sacramento, destination, Los Angeles (Campbell Soup Co.):

Tariff Charge	$189.09
Charge Assessed by Respondent	205.30
Overcharge	$ 16.21

Freight Bill No. S-10452, dated June 21, 1957, origin, Sacramento, destination, Glendale (Campbell Swanson Distributing Co.):

Tariff Charge	$174.87
Charge Assessed by Respondent	184.70
Overcharge	$ 9.83

Freight Bills Nos. S-65977 and S-67978, dated April 2, 1957, origin Sacramento, destination, West Glendale and San Diego (Campbell Soup Co.):

Tariff Charge	$400.79
Charge Assessed by Respondent	363.82
Undercharge	$ 36.97

Freight Bill No. L-78279, dated June 14, 1957, origin, Los Angeles, destination, Sacramento (U.S. Growers Cold Storage Co.):

Tariff Charge	$196.88
Charge Assessed by Respondent	233.95
Overcharge	$ 37.07

Said undercharges total $854.44 while overcharges amount to $63.11.

We are not in sympathy with carriers who utilize what we consider to be a tortured construction of their tariffs in order to meet the transportation requirements of a particular shipper; however, we are satisfied from all of the evidence presented that this carrier did not deliberately intend to violate the law. The percentage of violations that occurred compared with the total transportation performed during the period under investigation was remarkably small and is a factor that cannot be disregarded in evaluating this carrier's rating practices. It would not be in the public interest nor do we believe the violations merit the serious financial loss that could occur if complete suspension of the carrier's certificate were ordered. 85% of the total transportation performed by this carrier involves its certificate; 15% consists of shipments moving under its various permits. While this case was pending we approved the transfer and sale of all the outstanding stock of Sacramento Freight Lines to Fortier Transportation.[2/] We indicated, however, that we would hold in abeyance the request of

2/ Decision No. 57228, dated August 26, 1958, in Application No. 40090.

Sacramento Freight Lines for an order authorizing the transfer of its operative rights and properties "pending receipt of further information" on how the ultimate transfer is to be accomplished.

It is the Commission's conclusion, therefore, that a reasonable penalty for the violations found is a partial suspension of a portion of this carrier's operating rights. Accordingly, respondent's certificate to operate as a highway common carrier, its radial highway common carrier permit and its highway contract carrier permit will be suspended to the extent that said respondent will be prohibited from serving the shipper California Packing Corporation for a period of 10 days, from serving Armstrong Cork Company, Incorporated, for a period of 5 days, and Campbell Soup Company for a period of 5 days. In addition, it will be ordered to collect the undercharges hereinabove found and to make reparation to the shippers concerned for the freight rate overcharges so found. Respondent will also be instructed to examine its records from April 1957 to the present time in order to determine if any additional undercharges or overcharges have occurred and to file with the Commission a report setting forth the additional undercharges or overcharges, if any, it has found. Respondent will also be directed to collect any such additional undercharges and to refund any overcharges.

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 that:

(1) Commencing at 12:01 a.m. on the third Monday following the effective date hereof, Sacramento Freight Lines, whether operating as a highway common carrier, radial highway common carrier or a highway contract carrier, shall not serve California Packing

Corporation, or its successors or agents, either as consignees or consignors, for a period of ten days; shall not serve Armstrong Cork Company, Incorporated, or its successors or agents, either as consignees or consignors, for a period of five days; and shall not serve Campbell Soup Company, or its successors or agents, either as consignees or consignors, for a period of five days. This prohibition shall be considered as a partial suspension of this respondent's certificate of public convenience and necessity to operate as a highway common carrier and its permits to operate as a radial highway common carrier and as a highway contract carrier.

(2) At least ten days before the suspension period commences Sacramento Freight Lines shall send written notice to the shippers mentioned in paragraph (1) notifying same of its suspensions and the period thereof and shall post at its terminals and station facilities used for receiving property from the public for transportation a notice to the public stating that its highway common carrier, radial highway common carrier and highway contract carrier operating authority have been suspended as set forth in paragraph (1) hereof.

(3) Sacramento Freight Lines shall examine its records for the period from April 1957 to the present time for the purpose of ascertaining if any additional undercharges or overcharges have occurred other than those mentioned in this decision.

(4) Within ninety days after the effective date of this decision, Sacramento Freight Lines shall file with the Commission a report setting forth all undercharges or overcharges found pursuant to the examination hereinabove required by paragraph (3).

(5) Sacramento Freight Lines is hereby directed to take such action as may be necessary to collect the amounts of undercharges and to refund the overcharges set forth in the preceding opinion,

together with any additional undercharges or overcharges found after the examination required by paragraph (3) of this order, and to notify the Commission in writing upon the consummation of such collections and reparations.

(6) In the event charges to be collected or amounts to be refunded as provided in paragraph (5) of this order, or any part thereof, remain uncollected or not refunded twenty days after the effective date of this order, Sacramento Freight Lines shall submit to the Commission, on the first Monday of each month, a report of the undercharges or overcharges remaining to be collected or refunded and specifying the action taken to collect or refund such charges and the result of such action, until such charges have been collected or refunded in full or until further order of this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Sacramento Freight Lines and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 16th day of DECEMBER, 1958.

C. Lyn Fox
President

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.