

ORIGINAL

Decision No. 58184

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of L. W.
KOERNER, doing business as TRANS
CALIFORNIA MOTOR LINES, also known
as TRANS CALIFORNIA MOTOR LINES,
INC., and KOERNER TRANSPORTATION
CO.

Case No. 6169

Lawrence W. Koerner, for respondent.Edward G. Fraser, for the Commission staff.C O P I N I O N

This Commission, on August 26, 1958, issued an order of investigation into the operations, rates, and practices of L. W. Koerner, doing business as Trans-California Motor Lines, Inc., who is engaged in the business of transporting property over the public highways as a radial highway common carrier, a highway contract carrier and as a city carrier. Pursuant to said order a public hearing was held before Examiner James F. Mastoris on January 13, 1959, at San Francisco, at which time evidence was presented and the matter submitted.

Purpose of Investigation

The purpose of this investigation is to determine whether the respondent:

(1) Violated Public Utilities Code Sections 3571 and 3942 by operating as a radial, contract and city carrier without first having obtained valid permits to so operate.

(2) Acted in violation of Public Utilities Code Sections 3737, 3664 and 3667 by charging and collecting for the transportation of property a rate less than the minimum rate established under Minimum Rate Tariff No. 2.

(3) Violated Public Utilities Code Section 3737 by issuing shipping documents that failed to comply with the requirements of Minimum Rate Tariff No. 2.

(4) Violated Section 3737 of said code by failing to adhere to other provisions of said Minimum Rate Tariff No. 2.

(5) Violated Section 3575 of said code by engaging subhaulers without having on file a sufficient bond to secure payment of his obligations to subhaulers.

(6) Violated Section 3775 of said code by failing to discontinue operations as a permitted carrier during a period when all permits issued to Trans-California Motor Lines, Inc., were suspended.

Staff's Evidence

The staff alleged and presented evidence in support of its allegations that the respondent violated the following sections of the Public Utilities Code in the following particulars:

(1) Mr. L. W. Koerner, when applying for a transfer of permits under Sections 3574 and 3944 of said code, represented that his company, Trans-California Motor Lines, Inc., was a corporation when, in fact, it was not. Evidence was produced showing that radial, contract and city carrier permits to operate were issued to Trans California Motor Lines, Inc., pursuant to the representations made in Mr. Koerner's applications and that transportation was performed during 1957 under the name and style of Trans-California Motor Lines, Inc. Said company did not become a corporation until October 1958. As a result it was contended that Mr. Koerner had been operating from January 1957 to October 1958 under permits issued to a nonexistent corporation.

(2) Evidence was offered indicating that the respondent improperly rated fourteen shipments of various general commodities that were transported between San Francisco Bay Area points and various southern California cities during the period from April to October, 1957. It was alleged that the errors that occurred resulted from the carrier applying an incorrect classification in rating certain commodities, using improper documentation on multiple lot shipments, failing to abide by split pickup regulations and failing to assess off-rail charges. Further relevant facts relative to these shipments, together with the staff's evidence concerning the correct minimum charges for such shipments, are set forth in the following table:

| <u>Frt. Bill No.</u> | <u>Date</u> | <u>Point of Origin</u> | <u>Point of Destination</u> | <u>Weight in Pounds</u> | <u>Charge As-sessed by Respondent</u> | <u>Correct Minimum Charge</u> | <u>Under-Charge</u> |
|----------------------|-------------|------------------------|-----------------------------|-------------------------|---------------------------------------|-------------------------------|---------------------|
| 2-2070 | 4/ 9/57 | Richmond | Glendora | 40,300 | \$141.05 | \$252.26 | \$111.21 |
| 2-2098 | 4/24/57 | Albany | Fontana | 125,945 | 478.59 | 653.65 | 175.06 |
| 2-2112 | 5/ 1/57 | S.F. | L.A. | 79,972 | 362.45 | 479.55 | 117.10 |
| 2-2128 | 5/ 7/57 | Albany | Fontana | 70,610 | 268.32 | 375.94 | 107.62 |
| 2-2137 | 5/10/57 | S.F. | L.A. & Nat. City | 102,590 | 372.74 | 398.05 | 25.31 |
| 2-2138 | 5/10/57 | S.F. | L.A. | 79,610 | 302.52 | 421.93 | 119.41 |
| 2-2178 | 5/31/57 | S.F. | Compton | 109,639 | 394.70 | 581.09 | 186.39 |
| 2-2179 | 6/ 1/57 | Albany | Fontana | 136,773 | 519.74 | 684.00 | 164.26 |
| 2-2199 | 6/12/57 | S.F. | L.A. | 197,045 | 748.78 | 894.88 | 146.10 |
| 2-2204 | 6/14/57 | S.F. | L.A. | 118,925 | 451.56 | 706.02 | 254.46 |
| 2-2210 | 6/24/57 | Oakland | L.A. | 82,000 | 328.00 | 377.20 | 49.20 |
| 2-2214 | 6/27/57 | S.F. | L.A. | 82,000 | 328.00 | 408.77 | 80.77 |
| 2-2219 | 7/ 3/57 | S.F. | Compton | 80,422 | 289.52 | 420.92 | 131.40 |
| 2-2350 | 10/15/57 | Richmond | Glendora | 39,900 | 179.55 | 249.76 | 70.21 |

Undercharges for these shipments totaled \$1,738.50.

(3) Because Mr. Koerner used old forms and freight bills of the Koerner Transportation Co., which firm discontinued operations prior to 1957, the staff contends the name of the carrier on such documents was improper and thus the respondent was in violation of Item 255 of Minimum Rate Tariff No. 2.

(4) Documentary evidence was produced disclosing that the respondent entered into certain lease arrangements with various permitted carriers which were in substance subhaul agreements. The respondent's permits were suspended from December 31, 1957 to March 1958 for its failure to maintain adequate liability insurance protection and his subhaul bond was canceled by his insurance carrier in November 1957. The staff alleges, therefore, that this carrier was employing subhaulers during the suspension period by virtue of this lease device after being informed its subhaulers' bond had been canceled. As a result it is contended this carrier's operations were unlawfully conducted in violation of Sections 3575 and 3775 of said Public Utilities Code.

Respondent's Position

Mr. L. W. Koerner, testifying on behalf of the respondent, admitted in substance that the allegations of the staff were true and correct except that he believed in good faith that his company had been organized as a corporation when he filed his application for transfer of permits. His attorney had notified him that incorporation documents were being filed and as a result he, in turn, indicated to the Commission that his organization was a corporation. He declared that he later discovered that the Secretary of State had refused to accept said incorporation papers. Under such circumstances, he stated that his company should not be found to have been operating without first obtaining valid permits.

It was explained that rate and document errors occurred because of mistakes made by the company's office manager and were not made with the intent of violating the law. However, the respondent admitted that he hired subhaulers to carry freight to

be shipped by him during the period from December 31, 1957 to March 1958. It was conceded the "lease agreements" were, in effect, subhaul arrangements. Such agreements were knowingly entered into by the respondent during the period of his suspension and after his subhaulers' bond had been canceled because transportation revenue was needed by the respondent in order "to remain in business".

Findings and Conclusions

Regardless of other legal disabilities that might flow from the respondent's failure to exist as a corporation when Mr. Koerner applied for a transfer of permits, we are convinced, under the circumstances, that we can treat the individual and the alleged corporate entity as one and the same, within the meaning of Public Utilities Code Sections 3571 and 3942. The evidence in this proceeding is not sufficient to support a finding that the respondent's application as a corporation for a transfer of permits was not made in good faith, or that it was made with a view to evade the law. Although subsequent negligence may be evident from the facts, a nonrecognition of the fusion of the two entities would result in probable inequity and injustice. Therefore, we find that the respondent had been operating under valid permits during the period assailed by the staff.

However, as to the balance of the staff's case, we conclude, based upon the undisputed evidence of record, that all charges have been proven as alleged. Accordingly, we find:

- (1) That this carrier violated Public Utilities Code Sections 3737, 3664 and 3667 by charging and collecting for the transportation of property a rate less than the minimum established by the Commission, and that undercharges occurred as hereinbefore set forth.

- (2) Violated Public Utilities Code Section 3737 by issuing shipping documents that failed to comply with the requirements of Item 255 of Minimum Rate Tariff No. 2.
- (3) Violated Section 3575 of said code by engaging subhaulers without having the bond on file as required under said code.
- (4) Violated Section 3775 of said code by failing to discontinue operations as a permitted carrier during the period when his permits had been suspended.

Penalty

Some of the foregoing violations indicate a marked indifference to the rules and regulations of this Commission and of the requirements of the Public Utilities Code. In addition, as the aforementioned lease transactions were, in effect, transportation agreements, their use during a period of suspension clearly discloses an intent to circumvent the prohibitions of said suspension. Such a bold subterfuge does not call for leniency. The desire to remain in business is, of course, understandable; but it is not an excuse for such conduct. Therefore, in light of the seriousness of the offenses so found, respondent's radial and highway permits will be suspended for a period of 15 days. However, the imposition of five days of said suspension will be deferred and suspended for a period of one year. In other words, ten days of said suspension will be executed immediately upon the effective date of this decision, while the remainder will be deferred for one year. If, at the end of the one-year period, the Commission is satisfied that respondent is complying with all such orders, rules, and regulations, the deferred portion of said suspension

will be vacated without further order of the Commission. However, if the Commission finds at any time during the one-year period that respondent is failing to comply with all such orders, rules, and regulations, the additional five-day period of suspension will be imposed, together with whatever additional penalty the Commission deems necessary. In addition, this carrier will be ordered to collect the undercharges hereinbefore found. Furthermore, respondent will also be directed to examine its records from April 1, 1957 to the present time in order to determine whether 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

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 38-6831 and Highway Contract Carrier Permit No. 38-6832 issued to Trans-California Motor Lines, Inc., also known as L. W. Koerner, doing business as Trans California Motor Lines, and Koerner Transportation Co., are hereby suspended for fifteen days. However, execution of five days of said suspension is hereby deferred and suspended pending further order of the Commission. If no further order of the Commission is issued affecting said suspension within one year from the date of issuance of this decision, the unexecuted period of suspension shall be vacated. The executed period of suspension will commence at 12:01 a.m. on the second Monday following the effective date of this order.

2. That respondent 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 and highway contract carrier permit have been suspended by the Commission.

3. That respondent shall examine its records for the period from April 1, 1957 to the present time for the purpose of ascertaining whether any additional undercharges have occurred, other than those mentioned in this decision.

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

5. That respondent is hereby directed to take such action as may be necessary, including court proceedings, to collect the amounts of undercharges set forth in the preceding opinion, together with any additional undercharges found after the examination required by paragraph 3 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 one hundred twenty days after the effective date of this order, respondent 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, until such charges have been collected 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 Trans-California Motor Lines, Inc., also known as L. W. Koerner, doing business as Trans California Motor Lines and Koerner Transportation Co. and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 24th day of March, 1959.

E. L. Fox
President
W. L. D. [illegible]
William H. [illegible]
Theodore [illegible]
Ernest [illegible]
Commissioners