

Decision No. 58705**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 ALLAN) Case No. 6217
ARTHUR TRANSPORTATION, INC., a)
California corporation.)

Conroy F. Owens and Arthur W. Bastian for Allan
Arthur Transportation, Inc., respondent.
Edward G. Fraser for the Commission's staff.

O P I N I O N

This Commission, on January 13, 1959, issued an order of investigation into the operations, rates, and practices of Allan Arthur Transportation, Inc., a California corporation, which is engaged in the business of transporting property over the public highways of this state as a highway common carrier. Pursuant to said order a public hearing was held on February 26, 1959 at Los Angeles before Examiner James F. Mastoris, at which time evidence was presented and the matter was submitted.

Purpose of Investigation

The purpose of this investigation is to determine whether the respondent violated Section 494 or Section 532 of the Public Utilities Code by charging and receiving a different compensation for the transportation of livestock than the applicable rates and charges prescribed in its tariff on file with the Commission. An additional purpose is to ascertain whether this carrier failed to adhere to the various rules and regulations of said tariff in the transportation of livestock.

Staff's Position

The staff contends that the respondent, while performing transportation of livestock under its certificate between Los Angeles

and various points in California during the period from November 1957 to June 1958, improperly rated some 28 shipments in contravention of the provisions of its tariff. Evidence was produced indicating that the carrier failed to comply with:

- (1) Item No. 130 of its tariff by not applying appropriate split pickup regulations and charges on certain shipments.
- (2) Items Nos. 170 and 180 of said tariff by not applying, on the majority of shipments, the correct livestock rate between certain points.
- (3) Item No. 120 of said tariff by failing to obtain a public weighmaster's certificate. As a result, it was alleged that the applicable tariff rate and charge could not be ascertained on many shipments.
- (4) Item No. 161 of said tariff, in many cases, by failing to obtain signatures of the consignor or other party responsible for the tender of the shipments on agreements for carriage.
- (5) Item No. 68 of said tariff by charging a rate based upon a unit of measurement different from that in which the rates and charges are stated in said tariff. For example, in one instance this carrier assessed a charge based upon a "flat rate" when the appropriate tariff rate was based upon a rate in cents per 100 pounds.
- (6) Item No. 50 of said tariff by improper consolidation of shipments when separate agreements for carriage were issued for each movement. This alleged violation occurred on ten occasions.
- (7) Item No. 140 of said tariff by failing to apply appropriate split delivery rules and charges. As in the split pickup hauls, the staff contends that the tariff requires each movement to be treated as a separate shipment and to be rated accordingly when written delivery instructions are not furnished to the carrier at the time of tender of shipment.

The staff also presented evidence that the respondent entered into a scheme with certain shippers to refund a part of the transportation charge by deducting a sum which ostensibly represented a "bruise claim" on the livestock carried. It was alleged, and evidence was offered in support thereof, that these claims were

fictitious and were, in effect, arrangements by which the trucker did not receive the legal transportation charge. The shippers deducted these claims before making payment to the carrier. On some sixteen shipments of cattle and sheep, approximately \$1,061.97 was deducted from the tariff charges, resulting in carriage by the respondent at less than the published rates on file with the Commission; with respect to one shipper, the amount of such claims represented 17% of the total freight charges. Such practice was stated to be necessary in order to obtain the business of the particular shippers involved.

Respondent's Evidence

The respondent, through the testimony of its current vice-president, conceded that the staff's charges were correct in all particulars, but he offered evidence in extenuation of the offenses, showing that the violations that occurred were the result of the negligence and, in the case of the "bruise claims," the machinations, of its former vice-president and general manager of operations. Evidence was received that this former officer of the corporation was responsible for the rating of shipments during the period in question and that, because of his apparent incompetence or inadvertence, and because of the errors of his subordinates, shipments moved contrary to the carrier's published tariffs.

The respondent's witness declared that the board of directors of the corporation immediately terminated the former officer's employment when the errors were discovered and the "bruise claim" device came to light. As a result of these violations, the respondent has adopted new rating practices and procedures. It no longer carries freight for the shippers involved in the "bruise

claim" agreements and it states it has taken all possible steps and measures to rectify the damage done by this officer's activities.

Findings

Based upon the evidence of record, we find that the staff's charges have been proved as alleged and that, as a consequence, the respondent violated Sections 494 and 532 of the Public Utilities Code by:

- (1) Charging and collecting a compensation, other than the applicable rates and charges on file with the Commission, for the transportation of livestock. Further relevant facts relative to the aforementioned 28 shipments which the Commission hereby finds, together with our conclusions concerning the correct minimum charges for such shipments, are set forth as follows:

<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 Assessed or Collected by Respondent</u>	<u>Correct Rate and Charge</u>	<u>Under-charge</u>
7051	11-18-57	Dixon	Brawley	28,080	\$318.80	\$422.80	\$104.00
7084	11-24-57	Brawley	Vernon	1,060	5.94	10.18	4.24
7085	11-24-57	Brawley	Vernon	12,180	60.43	102.31	41.88
7665	3-11-58	Blythe	Wintersburg	14,325	74.49	128.93	54.44
7719	3-13-58	Mt. Signal	Thermal	103,195	247.67	268.31	20.64
7816	3-27-58	Brawley	Maxwell	25,420	246.00	391.47	145.47
7812	3-29-58	Willows	Vernon	34,540	335.04	424.84	89.80
7897	4- 8-58	Mt. Signal	Coachella	103,350	248.04	268.71	20.67
7931	4-15-58	El Monte	Wintersburg	47,475	61.72	78.00	16.28
7959	4-20-58	MontereyPk.	Monterey Pk.	30,000	36.00	41.65	5.65
8014	4-23-58	Heber	Wintersburg	29,610	156.00	195.43	39.43
8030	4-23-58	Various	Wintersburg	87,500	67.50	94.55	27.05
8031	4-26-58	SantaMaria	Wintersburg	25,880	170.81	185.01	14.20
8058	4-28-58	Vernon	Wintersburg	37,500	67.50	116.22	48.72
8005	4-29-58	Various	Wintersburg	32,865	172.40	206.35	33.95
8107	5- 5-58	Various	Wintersburg	36,090	189.17	274.26	85.09
8153	5- 8-58	Holtville	Los Angeles	39,880	195.41	207.38	11.97
8154	5-10-58	Templeton	Vernon	63,000	346.50	358.05	11.55
8231	5-14-58	Various	Norwalk	31,540	309.09	327.86	18.77
8202	5-14-58	Holtville	Vernon	43,340	212.37	225.37	13.00
8198	5-17-58	Calimesa	Los Angeles	17,540	54.37	64.80	10.43
8301	5-20-58	Stockton	Norwalk	38,420	376.52	395.73	19.21
8305	5-20-58	Thous.Oaks	Thermal	167,060	735.06	747.75	12.69
8294	5-21-58	Wintersburg	Vernon	37,080	66.74	86.40	19.66
8474	5-28-58	Heber	Wintersburg	30,000	156.00	192.13	36.13
8476	6- 1-58	Calxico	Wintersburg	36,860	191.67	246.00	54.33
8477	6- 2-58	Costa Mesa	Wintersburg	50,035	45.03	46.79	1.76
8387	5-25-58	Various	Los Angeles	25,840	191.22	204.55	13.33

Undercharges for these shipments amounted to \$974.34.

(2) Furthermore, we hereby find that the respondent did give, furnish, and cause to be given and furnished to Modern Meat Company and to Rosen Meat Company a rebate and refund of a portion of the rates and charges specified in the respondent's tariff in violation of said Section 494 of the Public Utilities Code.

Penalty

Although we are satisfied that the respondent's current management may not have been involved in the operations which resulted in the foregoing violations and that it has since attempted to correct the mistakes so discovered, the fact remains that the respondent, a corporation, is responsible for and must suffer the consequences of the negligence and conduct of its officers and employees. Their activities and inadvertence are imputed to their principal. Their acts are the respondent's acts. Moreover, the record discloses that the corporation was lax in ascertaining the former manager's truck-rate background and qualifications when it hired him and that it failed to supervise his rating practices while he was serving as general manager of operations.

Therefore, in view of the scope of operations of this carrier and the nature of the foregoing violations, respondent's certificate of public convenience and necessity to operate as a highway common carrier will be suspended for a period of 3 days, and it will be ordered to collect the undercharges hereinbefore found. Had it not been for the fact that this carrier had no prior record of violations before this Commission, the quality of violations would have merited a longer period of suspension.

In addition, respondent will also be directed to examine its records from January 1, 1958 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. Furthermore, it will also be ordered to collect the unauthorized refunds on the said "bruise claims."

O R D E R

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

IT IS ORDERED:

1. That the certificate of public convenience and necessity to operate as a highway common carrier, issued to Allan Arthur Transportation, Inc., by Decision No. 54175, dated December 4, 1956, is hereby suspended for three consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.
2. That Allan Arthur Transportation, 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 highway common carrier certificate has been suspended by the Commission for a period of three consecutive days; that, within five days after such posting, Allan Arthur Transportation, Inc., shall file with the Commission a copy of such notice, together with an affidavit, setting forth the date and place of posting thereof.
3. That Allan Arthur Transportation, Inc., shall examine its records for the period from January 1, 1958 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

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

5. That Allan Arthur Transportation, Inc., 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 Allan Arthur Transportation, Inc., is further directed to take such action as may be necessary, including court proceedings, to collect from Modern Meat Company the amount of money deducted by said company from transportation charges assessed by Allan Arthur Transportation, Inc., for transportation performed by said Allan Arthur Transportation, Inc., as reflected in freight bills summarized in Part 29 (sub-parts A through F) of Exhibit 4 of the exhibits received into evidence in this proceeding. Said Allan Arthur Transportation, Inc., is further directed to take similar action to collect from Rosen Meat Company the amounts deducted by said company from transportation charges assessed by Allan Arthur Transportation, Inc., for transportation performed by said Allan Arthur Transportation, Inc., as reflected in freight bills summarized in Part 30 (sub-parts A through I) of said Exhibit 4.

7. That, in the event charges to be collected as provided in paragraphs 5 and 6 of this order, or any part thereof, remain uncollected one hundred and twenty days after the effective date of this order, Allan Arthur Transportation, Inc., shall submit to the

Commission, on the first Monday of each month, a report of the under-charges remaining to be collected, 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 Allan Arthur Transportation, Inc., and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 21st day of April, 1959.

E. L. Fox
President
W. L. D. [Signature]
[Signature]
[Signature]
Commissioners

Commissioner Everett C. McKee, being necessarily absent, did not participate in the disposition of this proceeding.