

ORIGINAL

Decision No. 58325

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of LIBERTY FREIGHT LINES, a corporation.

Case No. 6132

Glanz & Russell, by Theodore W. Russell, for respondent.
Martin J. Porter, for the Commission staff.

O P I N I O N

On June 24, 1958, the Commission issued an order of investigation on its own motion into the operations, rates, and practices of Liberty Freight Lines, a corporation. This investigation was instituted for the purpose of determining whether the respondent had violated Section 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property as a highway permit carrier than the applicable minimum rates and charges required by the Commission's Minimum Rate Tariff No. 2.

A public hearing was held at Los Angeles on November 6, 1958 before Examiner William L. Cole, at which time the matter was submitted.

Findings and Conclusions

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

1. That the respondent is a corporation which, at the time of the shipments hereinbelow referred to, had been issued permits by this Commission to operate as a highway permit carrier.

2. That, prior to the time of the shipments in question, the respondent had been served with the Commission's Minimum Rate Tariff No. 2 and all pertinent supplements and additions thereto.

3. That, during the month of September 1957, the respondent transported shipments between various points in the State of California. The evidence shows that the respondent improperly consolidated various of these separate shipments when assessing and collecting its transportation charges. Further facts surrounding these shipments, together with the Commission's conclusions as to the correct transportation charges for such shipments, are set forth in the following table:

<u>Ident. No.</u>	<u>Date of Shipment</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Commodity Transported</u>	<u>Charge As-^{L/}essed</u>	<u>Correct Min. Charge</u>
A-1	9/ 3/57	Los Angeles	San Diego	Beef	\$116.04	\$133.16
B-1	9/ 4/57	Los Angeles	San Francisco	Meat	--	180.54
B-2	9/ 5/57	Los Angeles	San Francisco	Meat	--	51.95
B-3	9/ 5/57	Los Angeles	Concord	Meat	--	35.11
B-4	9/ 5/57	Los Angeles	El Cerrito	Meat	--	15.22
B-5	9/ 5/57	Los Angeles	Oakland	Meat	--	59.84
B-6	9/ 5/57	Los Angeles	San Lorenzo	Meat	--	33.20
B-7	9/ 5/57	Los Angeles	San Mateo	Meat	--	59.84
B-8	9/ 5/57	Los Angeles	Redwood City	Meat	--	37.50
B-9	9/ 5/57	Los Angeles	San Jose	Meat	263.06	36.97
C-1	9/ 3/57	Sunnyvale	La Habra	Juice	--	142.73
C-2	8/30/57	Sunnyvale	La Habra	Juice	--	180.00
C-3	9/ 5/57	Sunnyvale	La Habra	Juice	--	65.31
C-4	9/ 5/57	Sunnyvale	La Habra	Juice	--	94.22
C-5	9/ 5/57	Sunnyvale	La Habra	Juice	311.44	45.32
D-1	9/ 4/57	Sacramento	Los Angeles	Juice	--	180.00
D-2	9/ 4/57	Sacramento	Los Angeles	Canned Goods	--	190.00
D-3	9/ 5/57	Sacramento	Los Angeles	Canned Goods	--	121.98
D-4	9/ 5/57	Sacramento	Los Angeles	Canned Goods	--	187.16
D-5	9/ 5/57	Sacramento	Los Angeles	Canned Goods	--	190.00
D-6	9/ 7/57	Sacramento	Los Angeles	Canned Goods	748.32	190.00
E-1	9/ 3/57	Mt. View	Los Angeles	Canned Goods	--	75.60
E-2	9/ 9/57	Mt. View	Los Angeles	Canned Goods	232.16	202.44
F-1	9/10/57	Sacramento	Los Angeles	Canned Goods	--	183.54
F-2	9/13/57	Sacramento	Los Angeles	Canned Goods	--	138.03
F-3	9/13/57	Sacramento	Los Angeles	Canned Goods	347.39	178.29
G-1	9/12/57	Mt. View	Los Angeles	Canned Goods	--	88.83
G-2	9/13/57	Mt. View	San Diego	Canned Goods	--	49.72
G-3	9/13/57	Mt. View	Los Angeles	Canned Goods	--	23.71
G-4	9/13/57	Mt. View	Los Angeles	Canned Goods	--	33.87
G-5	9/13/57	Mt. View	Glendale	Canned Goods	--	33.87
G-6	9/13/57	Mt. View	Los Angeles	Canned Goods	--	16.93

(Contd)

Ident. No.	Date of Shipment	Point of Origin	Point of Destination	Commodity Transported	Charge ^{1/} Corrected	
					As-sessed	Min. Charge
G-7	9/13/57	Mt. View	Los Angeles	Canned Goods	\$ --	\$ 75.60
G-8	9/13/57	Mt. View	Los Angeles	Canned Goods	--	62.25
G-9	9/18/57	Mt. View	Los Angeles	Canned Goods	--	16.93
G-10	9/18/57	Mt. View	Los Angeles	Canned Goods	--	37.84
G-11	9/18/57	Mt. View	Los Angeles	Canned Goods	--	15.77
G-12	9/18/57	Mt. View	Los Angeles	Canned Goods	--	10.43
G-13	9/18/57	Mt. View	S. Bernardino	Canned Goods	--	17.97
G-14	9/18/57	Mt. View	S. Luis Obispo	Canned Goods	--	10.69
G-15	9/18/57	Mt. View	S. Luis Obispo	Canned Goods	--	11.36
G-16	9/18/57	Mt. View	La Habra	Canned Goods	255.86	28.46
H-1	9/12/57	Martinez	La Habra	Canned Goods	--	155.29
H-2	9/17/57	Martinez	La Habra	Canned Goods	272.00	186.34
I-1	9/21/57	Los Angeles	Berkeley	Canned Goods	--	196.37
I-2	9/24/57	Los Angeles	Berkeley	Canned Goods	245.73	85.75
J-1	9/13/57	Oakland	Los Angeles	Canned Goods	--	233.74
J-2	9/10/57	Oakland	Los Angeles	Canned Goods	--	137.64
J-3	9/ 5/57	Oakland	Los Angeles	Canned Goods	--	120.20
J-4	9/ 5/57	Oakland	Los Angeles	Canned Goods	450.96	58.65

4. Subsequent to September 1957, the respondent was issued by this Commission a certificate of public convenience and necessity to operate as a highway common carrier between the Los Angeles Territory and the San Francisco Territory.

5. At the time of the hearing in this matter, the respondent owned approximately 23 line-haul trailers, 11 line-haul tractors, and 6 pieces of pickup and delivery equipment. The respondent's approximate monthly gross revenue for general freight is \$60,000.

Violations

Based upon the findings and conclusions hereinabove set forth, the Commission further finds and concludes that the respondent violated Section 3667 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser compensation for the transportation of property as a highway permit carrier than the applicable minimum rates and charges required by the Commission's

^{1/} Each charge shown in this column represents the charge assessed by the respondent for that particular shipment and those immediately preceding it for which no charges are shown.

Minimum Rate Tariff No. 2. The undercharges resulting from these violations totaled \$1,473.20.

The evidence indicates that, with respect to the shipment identified as A-1, the respondent used an incorrect rate in calculating the transportation charges assessed. The violations which occurred with respect to the remaining shipments referred to in paragraph 3 resulted because the respondent improperly consolidated various shipments into single shipments for the purpose of assessing transportation charges. These shipments were improperly consolidated because they were not picked up within the 48-hour period required by Item 85-A of the Commission's Minimum Rate Tariff No. 2.

With respect to most of the shipments in question, the respondent conceded the incorrectness of the charges assessed by it. With respect to some of the shipments, however, the respondent, while it conceded the incorrectness of its charges, challenged the minimum charges calculated by the staff. These shipments are those identified by the letter "B" in paragraph 3. These shipments involved pickups made by respondent from the King Meat Company in Los Angeles. These pickups were made on September 3, 4 and 5, 1957. Individual bills of lading and hand tags were issued for each pickup, and a master bill of lading and a freight bill covering all the pickups was issued on September 3, 1957. The respondent consolidated all the pickups together and rated them as one shipment. The staff consolidated the pickups made on September 3 and 4 together as one shipment but rated the pickups made on September 5 as separate shipments. Under the evidence presented, it is the Commission's conclusion that the staff's method results in the lowest lawful minimum charges under the particular facts pertaining to this transportation.

With respect to the shipments identified by the letters "D" and "F", the respondent challenged the staff's conclusions that the respondent had improperly consolidated these various shipments into two shipments. The evidence shows that the shipments identified by the letter "D" were picked up over a four-day period, and that the shipments identified by the letter "F" were picked up over a three-day period. Inasmuch as none of these days involved holidays or week-ends, it is clear that the shipments were improperly consolidated by the respondent. The respondent maintained that the staff was incorrect in rating all the shipments as separate shipments. The staff maintained that the shipments were rated separately because no master shipping document was issued prior to or at the time of the first pickup in either of the two situations. The respondent maintained, however, that the bills of lading prepared for each of these pickups by referring to one of the other bills of lading, when taken all together, met the single shipping document requirement of Item 85-A of Tariff No. 2. The Commission does not agree with this contention. Item 85-A requires the issuance of a single shipping document covering the entire shipment. A document covering only an individual pickup which refers to another document covering only an individual pickup does not meet this requirement. The Commission finds and concludes that the minimum charges as calculated by the staff for these shipments are correct.

Penalty

As indicated in the above findings, subsequent to the period of time the shipments in question took place, the respondent was issued a certificate of public convenience and necessity to operate as a highway common carrier between several points in the

State. The respondent maintained that any penalty imposed by the Commission in this matter could not result in the suspension or revocation of this certificate inasmuch as it was issued after the date the violations occurred.

Section 1070 of the Public Utilities Code provides for the suspension and revocation of certificates of public convenience and necessity to operate as a highway common carrier. This section provides that the Commission may suspend a certificate for good cause. The question then arises, What did the Legislature mean to include within the term "good cause"? Did it mean to include within that term the violations of a carrier's permitted rights which occurred prior to his obtaining a certificate? The Public Utilities Act itself does not give any hint as to the Legislature's intent in this matter, except that from an examination of the Act it would appear that the Legislature intended to give the Commission broad discretionary powers and, because of this, specific reasons for suspension were not set out. An examination of the Highway Carriers Act does give some indication, however, of what the Commission deems good cause for the suspension of operating rights. Section 3774 specifically enumerates the grounds under which the permits provided for in that Act can be suspended. Among the grounds is "any illegally conducted highway carrier operation". The definition "highway carrier" includes highway common carriers. Therefore, it would appear that a carrier's permits can be suspended for violations of the Public Utilities Act. Likewise, it would appear from a careful reading of Section 3774 that violations occurring prior to the obtaining of a permit constitute grounds for suspension of a permit. If the Legislature deemed this to be good cause for suspension under

the Highway Carriers Act, it would seem to follow that they likewise intended violations of the Highway Carriers Act which occurred prior to the obtaining of a certificate to constitute good cause for the suspension of the certificate. In view of this, it is the Commission's conclusion that a violation of the Highway Carriers Act which occurs prior to the obtaining of a certificate of public convenience and necessity to operate as a highway common carrier constitutes "good cause" under Section 1070 to suspend that certificate.

After consideration of all the circumstances in this case, it is the Commission's opinion that the 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 should be suspended for a period of two consecutive days.

O R D E R

A public hearing having been held in the above entitled matter and the Commission being fully informed therein,

IT IS ORDERED:

1. That the Certificate of Public Convenience and Necessity, the Radial Highway Common Carrier Permit No. 19-43041 and the Highway Contract Carrier Permit No. 19-42046 issued to Liberty Freight Lines are hereby suspended for two consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

2. That Liberty Freight Lines 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 Certificate of Public Convenience and Necessity, its Radial Highway Common Carrier Permit No. 19-43041 and its Highway Contract Carrier Permit No. 19-42046 have been suspended by the Commission for a period of two days; that within five days after such posting Liberty Freight Lines 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 Liberty Freight Lines shall examine its records for the period from July 1, 1957 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, Liberty Freight Lines shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That Liberty Freight Lines is hereby directed to take such action as may be necessary 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 and twenty days after the effective date of this order, Liberty Freight Lines shall submit to the Commission, on the first Monday of each month, a report of the undercharges 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 Liberty Freight Lines and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at Los Angeles, California, this 28th day of April, 1959.

E. Lynn Fox President
W. L. H. H. H.
W. L. H. H. H.
Thermon J. ...
 Commissioners

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