

Decision No. 58595**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 JAMESON
TRUCK LINES, a California corpo-
ration, and ROY and DAROL JAMESON,
copartners, doing business as
ROY JAMESON & SON.

Case No. 6136

Marvin Handler for Jameson Truck Lines and Roy
Jameson & Son, respondents.
William L. Knecht for California Farm Bureau
Federation, interested party.
Karl K. Roos for the Commission's staff.

O P I N I O N

This Commission, on June 24, 1958, issued an order of investigation into the operations, rates and practices of Jameson Truck Lines, a California corporation, and Roy and Darol Jameson, co-partners, doing business as Roy Jameson & Son, who were, at the time the transportation in issue was performed, engaged in the business of transporting property over the public highways under various authorizations issued by this body. Pursuant to said order public hearings were held in San Francisco on February 11, 1959 and March 9, 1959 before Examiner James F. Mastoris. Briefs were filed by both parties and this matter was submitted on April 15, 1959.

Purpose of Investigation

The purpose of this investigation is to ascertain:

(1) Whether either, any or all respondents named have violated Section 3667 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of property than the applicable rates prescribed in Minimum Rate Tariffs Nos. 2 and 8, or either of them.

(2) Whether respondents Roy Jameson and Darol Jameson have violated Section 494 of the Public Utilities Code by charging and collecting for the transportation of property a different compensation than the rates and charges specified in their schedules filed and in effect at the time the transportation was performed.

Staff's Evidence

Evidence offered by the staff of the Commission indicated that, with respect to some 38 shipments of general commodities transported from August to October 1957 primarily between San Francisco Bay Area cities and southern California points, the respondents violated various provisions of the aforementioned minimum rate tariffs and their highway common carrier rate schedules by improperly rating said shipments. The majority of the violations consisted of erroneous consolidation of multiple-lot movements and incorrect application of split pickup and delivery rules. Most of the errors that occurred resulted from the lack of proper documentation. Further evidence was produced showing that, on many shipments, information appearing on the carrier's documents was not sufficient to permit determination of the applicable minimum rate and charge.

Respondents' Position

The respondents conceded that violations occurred as charged by the staff as to all shipments in issue except two. As to those two, exhibited in freight bills Nos. 41105 dated October 4, 1957 and 32277 dated September 6, 1957, it is contended that the freight moved under the permits held by the corporate respondent and not, as alleged by the staff, under the certificate and authorities held by Roy Jameson and Darol Jameson. The carrier alleges the partnership and corporation are separate and distinct entities and should be recognized as such. In support of the position taken, evidence was presented showing that each entity had separate payrolls,

bank accounts and accounting records. The corporation was formed after some of the partnership's shippers objected to transporting their freight under the highway common carrier certificate possessed by the said Jamesons.

Findings and Conclusions

In view of the undisputed facts and after careful consideration of the record, we find that the staff's charges have been proven as alleged. We find no difficulty in holding that as to the contested movements the corporation and the partnership were one and the same entity. Despite the separateness of the payrolls, bank accounts and accounting records, and despite the attempt to adjust these accounts periodically in order to maintain equipment and personnel segregation, the fact remains that there was such a unity of interest and ownership that the separate personalities of the two entities cannot be said to exist. All of the outstanding stock of the corporation is held in equal shares by Roy and Darol Jameson. They comprise the partnership and each holds an equal interest therein. The active management and control of both entities is in the hands of Darol Jameson. Joint offices and terminals are maintained. Shipping documents of both entities are in the name of the partnership; the employee of the partnership handles the billing of both entities; debts of both were paid by checks of the other subject to bookkeeping adjustments at the end of an accounting period. Employees and equipment of each were used interchangeably in both operations, with economic considerations of convenience and availability determining the use. Funds received were deposited to the account of the entity that needed money at the time, regardless of the identity of the entity performing the transportation. If the separateness of the corporation from the partnership were maintained in view of these circumstances, this carrier could avoid its own published tariff rates

under its partnership certificate by shipping under the corporation's permits or could avoid the minimum rate tariff charges by deciding to use its certificated rates. Thus this carrier could charge a rate different from the rate established in its tariff. To recognize such a double relationship would enable the respondents to select between its filed tariff or the minimum rate tariffs in rating identical shipments between the same points and thus be in a position to give an advantage to preferred shippers. The recognition of the two identities in these circumstances would result in the evasion, circumvention and frustration of regulatory law. We find, therefore, that under these particular facts the corporation is the alter ego of the partnership. (Gordon v. Aztec Brewing Co., 1949, 33 Cal. 2d 514, 520-23; Direct Delivery System, 1955, 54 P.U.C. 258, 262-4 Public Utilities Code Sections 453, 494, 3542.)

In light of the foregoing, the Commission hereby finds and concludes that respondents violated Sections 494 and 3667 of the Public Utilities Code by charging and collecting a different compensation than the rates and charges specified in their filed schedules and by charging and collecting a lesser compensation for the transportation of property than the applicable minimum rates established by the Commission. We express no finding with respect to the evidence regarding insufficient information on the respondents' freight bills in view of the limitations of the order instituting investigation.

The following table sets forth relevant facts pertinent to the mis-rated shipments, together with our conclusions concerning the correct charges for such shipments:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed or Collected by Respondents</u>	<u>Correct Charge</u>	<u>Undercharge</u>
46171	8-23-57	\$ 18.57	\$ 40.95	\$ 22.38
32228	9- 9-57	24.20	46.78	22.58
46281	9-11-57	2.07	6.47	4.40
46461	9-20-57	116.16	218.97	52.81
32208	8-29-57	27.43	170.40	142.97
32210	8-29-57	117.63	170.40	52.77
22627	8-22-57	27.67	75.24	47.57
41707	10- 7-57	250.38	281.20	30.82
29513	8- 7-57	172.24	226.67	54.43
35756	10- 3-57	24.20	46.78	22.58
41105	10- 4-57	395.89	441.21	45.32
32277	9- 6-57	357.36	507.75	150.39
35782	8- 3-57	3.00	13.27	10.27
32126	9-10-57	109.96	159.03	49.07
36076	8-12-57	230.36	239.99	9.63
32158	8-19-57	142.45	242.48	100.03
32175	8-27-57	89.57	147.67	58.10
32310	9- 7-57	147.94	181.67	33.73
32286	8-28-57	419.25	533.90	114.65
45396	9-16-57	262.70	373.18	110.48
32159	8-22-57	299.35	419.33	119.98
32309	9-11-57	385.60	389.55	3.95
32063	8-26-57	309.91	322.14	12.23
35924	8- 9-57	62.75	94.59	31.84
32200	8-20-57	299.02	321.22	22.20
32419	9-19-57	129.62	137.11	7.49
32474	9-23-57	114.60	130.97	16.37
32101	9- 3-57	90.12	92.43	2.31
32123	9-10-57	5.00	13.40	8.40
32377	9-14-57	288.02	298.98	10.96
32197	9- 6-57	197.94	312.84	114.90
32375	9-12-57	280.67	300.16	19.49
32125	9-10-57	191.45	279.88	88.43

Total undercharges amount to \$1,593.53.

Penalty

The errors in rating and mistakes that occurred were the result of careless and negligent management. Although Darol Jameson was in ill health during the period in which these shipments moved, he continued to follow and adhere to rating practices and procedures, not analyzed or tested, established by a former office manager. No attempt was made to ascertain if such practices were in conformity with the Commission's requirements.

Since the performance of the transportation involved in this proceeding, the aforementioned Jamesons applied for and were granted authorization to terminate their certificate as well as their radial and contract permits. In addition, they transferred their city carrier's permit to the corporation in January of this year. Thus at present the Jamesons hold no operating rights and the partnership exists only for the purpose of winding up its affairs. All equipment formerly owned under the name of said partnership has been transferred to the name of the corporation. Such changes, of course, do not affect the penalty to be administered to the existing respondent corporation. Recently said corporation changed its name to the name of the partnership.

It is the Commission's conclusion that, in view of the nature of the violations so found, the scope and extent of the carrier's operations, and the fact that there were no charges of past violations, a reasonable penalty is a suspension of a portion of the corporation's operating rights. Accordingly, the respondent corporation's radial highway common carrier permit and highway contract carrier permit will be suspended for a period of five days, except that said suspension will not apply to the respondents' fresh milk-carrying operations. Respondents will also be directed to examine their records from August 1, 1957 to the present time in order to determine if any additional undercharges have occurred and to file with the Commission a report setting forth the additional undercharges, if any, they have found. Respondents will also be directed to collect any such additional undercharges.

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:

(1) That the Radial Highway Common Carrier Permit No. 49-1841 and the Highway Contract Carrier's Permit No. 49-1830 issued to Jameson Truck Lines, also known as Roy Jameson & Son, are hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order, except that said suspension will not apply to the transportation of fresh milk.

(2) That Jameson Truck Lines, also known as Roy Jameson & Son, 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 permit and highway contract carrier permit have been suspended by the Commission for a period of five days, as indicated in paragraph (1); that, within five days after such posting, Jameson Truck Lines, also known as Roy Jameson & Son, 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 Jameson Truck Lines, also known as Roy Jameson & Son, shall examine their records for the period from August 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, Jameson Truck Lines, also known as Roy Jameson & Son, shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

(5) That Jameson Truck Lines, also known as Roy Jameson & Son, 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 and twenty days after the effective date of this order, Jameson Truck Lines, also known as Roy Jameson & Son, 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 Jameson Truck Lines, also known as Roy Jameson & Son, and this order shall be effective twenty days after the completion of such service upon the respondents.

Dated at San Francisco, California, this 16th day of June, 1959.

E. L. Fox
President
W. H. ...
W. H. ...
Commissioners