

58596

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of WILLIAM H.
ANDERSON, doing business as
WILLIAM H. ANDERSON TRUCKING.

Case No. 6135

Everett Barr, for Respondent.
Elmer Sjostrom, for Commission 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 William H. Anderson, doing business as William H. Anderson Trucking, who is engaged in the business of transporting property over the public highways as a radial highway common carrier and as a highway contract carrier. Pursuant to said order, public hearings were held in Yreka on September 25, 1958 and in Los Angeles on January 7 and 8, 1959 before Examiner James F. Mastoris. The matter was submitted on March 31, 1959 upon the filing of briefs and late-filed exhibits.

Purpose of Investigation

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

- (1) Violated Public Utilities Code Sections 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,
- (2) Violated Public Utilities Code Section 3737 by issuing shipping documents that failed to comply with the requirements of said Minimum Rate Tariff No. 2 and by assessing freight charges based upon a unit of measurement different from that prescribed by said tariff.

(3) Violated Public Utilities Code Section 3704 by failing to maintain records as prescribed by the Commission for Class II carrier.

Issue

Fundamentally there is only one issue in controversy in this case: Was the point of origin at Yreka and the various points of destination in southern California on-railhead or off-railhead? With respect to twenty shipments of finished lumber moving from Yreka, Siskiyou County, to southern California lumber yards during the months from May to October 1957 the Commission's staff contends that the point of origin at Yreka and certain points of destination were not located on railhead when the transportation occurred and therefore the charges assessed by the carrier were improper. The staff maintains that an additional charge must be assessed based upon rates from railhead to the actual points of origin and destination. On the other hand, respondent claims that the point of origin as well as the disputed points of destination is being served directly by the railroads and thus his use of the rail rates was correct. Certain stipulations and concessions were entered by both parties regarding certain specific points of destination not in issue.

Findings

Item 200 of the aforementioned Minimum Rate Tariff No. 2 enables a permitted trucker to use a certificated carrier's rates when these rates produce a lower charge for the same transportation than results from the application of the rates provided in said tariff. Item 10 of said tariff declares that "same transportation" means " ... transportation of the same kind and quantity ... between the same points ..." Therefore the problem to be resolved is whether the trucker in utilizing the rail rate provisions of Item 200 for the purpose of assessing charges performed transportation constituting the "same transportation" as that which would have been performed by a

railroad operating between the same points of origin and destination. The crux of the definition, in our opinion, rests with the words "same points" as found in said Item 10. Such words must be construed in the physical and geographical sense and not, as the respondent claims, in the competitive sense.

A logical extension of "same points" resolves around the definitions of "point of origin" and "point of destination" as found in said Item 10 and especially upon the definition of "railhead" set forth in this section. If the particular yard, factory, plant, or mill in question possesses facilities, in light of these definitions, for the loading and unloading of lumber from railroad cars then the transportation performed by a truck is the same transportation which would have been performed by a railroad operating between the same points.

Unfortunately, however, the application of the facts to the foregoing provisions vary with the circumstances of each particular case. It is difficult to establish a general rule to apply to all points. We must analyze therefore the particular physical location of each individual point in issue. Based upon the evidence received at the hearings we find and conclude that:

(1) The point of origin at Cal-Shasta Lumber Sales in Yreka is off-railhead. This plant controls two parcels of property, one of which is a one-acre lot leased from the Fruit Growers Supply Company. A rail spur of the Yreka Western Railroad is located on this one-acre lot; however the respondent's trucks were not loaded by the shipper at this point but rather on the other parcel located approximately 1500 feet west of the lot. There are two additional pieces of property intervening between the property owned by Cal-Shasta Lumber Sales and the aforementioned one-acre lot where the rail spur is located (Exhibits Nos. 6 and 15). Neither of these intervening parcels is owned or leased by the consignor. The shipper uses intra-plant "carriers" to haul the

lumber from its yard over a public road to the aforementioned one-acre lot. In view of these physical facts we see no reason for departing from the ruling set forth in Application of Capital Freight Lines (1950) 50 P.U.C. 339 . In that case the movement from the factory to the rail loading point was in excess of 1200 feet. At pages 341 and 342 it was stated:

"On this record it seems clear, however, that the rail rates do not comprehend any transportation other than from the rail loading point. Under the circumstances, it is evident that applicant's service directly from the box factory is not the same transportation as that of the rail carrier." (emphasis added)

(2) W. F. Rugg Lumber Co. at Upland is on railhead as contended by the respondent. Verbal testimony as well as documentary evidence (Exhibits Nos. 10 and 17) indicate that the Santa Fe spur track is immediately adjacent to and runs alongside the storage yard. Railroad cars are unloaded at the track and the lumber is carried by fork lift through a gate in the enclosed fence into the yard. Said gate is 6 to 8 feet from this track. The staff's position is that the private spur track must run into the property owned or leased by the plant in question. We think this view is too restrictive. There is nothing in the definition of "railhead" as found in Item 10 which requires actual entry into or requires that the property be owned or leased. We believe it reasonable that the language in the definition,

"... a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from rail cars ..."

is broad enough to include the situation, as here, where the industry has an agreement with the railroad to spot cars for loading or unloading. Accordingly the storage area and the area immediately adjacent constituted a "receiving area" within the meaning of the definition of point of destination in Item 10. The combination constituted

"facilities for the unloading of property from rail car" and therefore the transportation performed by the trucker was the "same transportation."

(3) Valley Lumber Company at Escondido is off-railhead as contended by the staff. This spur track is six blocks or 1.2 miles from the consignee. Such obviously is not the "precise location" contemplated in the definition of point of destination.

(4) The Ontario Lumber Company at Ontario is off-railhead for the same reason that the Valley Lumber Company is off-railhead. It is two blocks from the nearest Union Pacific siding. The fact that the yard uses fork lifts over public streets to transport lumber from the spur track to the storage area doesn't make this point on-rail.

(5) The respondent's position that the California Lumber Corporation at Montebello is on-railhead is a correct one. The spur track runs immediately alongside the entire width of the 200-foot rear lot of the consignee. The track in fact is at the exact edge of the property line. Rail cars are unloaded from the side facing the yard by hand or fork lift and transported some 10 feet through a 40-foot-wide gate into the yard (Exhibit 9). The plant possesses a license from the railroad to use the right of way, although the agreement is silent on whether the plant has the right to have freight cars unloaded by the railroad. However, other evidence discloses that rail cars have been spotted by the Union Pacific Railroad at this location for the past six years. The fact that this spur track may be an extension of public team track serving numerous consignees is of no consequence.

(6) The staff's position is correct with respect to the Pioneer Material Company at Lawndale. The spur track is .9 miles from the consignee and thus clearly off-rail.

(7) Picks Building & Supply Company at West Covina is on-railhead. The Pacific Electric Railway spur off the main line runs parallel to

the enclosed yard of the consignee approximately 140 feet from the gate of the yard (Exhibit 8). However the record discloses that the area between the gate and the track is the right of way of the railroad and is leased by the consignee. Thus the leased right-of-way property is contiguous to the spur track and to the yard of the plant. The lumber from the rail cars is transported by fork lifts over the right of way to the gate of the consignee. A ramp and platform is located by the track and lumber of the consignee is stored on the right of way within a few feet from the track.

(8) The remaining two consignees in issue, the Dill Lumber Company, Redlands and the Gill Building Material at Boron, are off-rail as claimed by the Commission's staff. The former plant is .2 mile or 1,000 feet from the nearest siding (Exhibit 17), while the latter is across a public highway and three to four blocks from the nearest Southern Pacific spur track.

The respondent's contention that unless its position is sustained, shippers in the lumber industry in northern California would be priced out of the market by off-rail charges and would thus by-pass California markets is not a proper subject for this investigation. Arguments attacking the wisdom of the rules and regulations affecting permitted carriers should be addressed to the Commission in legislative-type proceedings before this body.

Based upon the foregoing, the Commission hereby finds and concludes that the respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of lumber than the applicable minimum rates prescribed by the Commission's Minimum Rate Tariff No. 2. As a result certain undercharges took place, even in those cases where we found that the consignee was on-railhead. Such findings do not eliminate but merely reduce the amount of the undercharges. The following table

sets forth revelant facts applicable to these undercharges:

: Freight:	: Point	: Point	: Weight	: Charge	: Correct:	:	
: Bill	: of	: of	: in	: by	: Minimum:	: Under-	
: No.	: Date	: Origin	: Destination	: Pounds	: Defendant:	: Charge:	: Charge:
4817	5/18/57	Yreka	Buena Park	51,890	\$311.34	\$332.10	\$ 20.76
4728	7/10/57	Yreka	Downey	45,960	275.76	294.14	18.38
7305	7/11/57	Yreka	Marysville	42,200	109.72	131.14	21.42
7152	7/23/57	Yreka	Upland	47,540	285.24	304.26	19.02
4896	8/ 6/57	Yreka	Escondido	47,400	284.40	340.14	55.74
4850	7/11/57	Yreka	Lancaster	46,280	277.68	296.19	18.51
7307	8/12/57	Yreka	No.Hollywood	51,980	311.88	352.21	40.33
4739	8/12/57	Yreka	Ontario	46,380	278.28	332.81	54.53
7308	8/13/57	Yreka	Montebello	50,320	301.92	322.05	20.13
7309	8/20/57	Yreka	Lawndale	49,400	296.41	354.49	58.08
7351	8/21/57	Yreka	Lawndale	48,740	292.44	349.75	57.31
7162	8/27/57	Yreka	West Covina	51,120	306.72	327.17	20.45
7426	9/19/57	Yreka	West Covina	49,400	296.40	316.16	19.76
7165	9/ 5/57	Yreka	Pasadena	49,400	296.40	316.16	19.76
7176	9/24/57	Yreka	La Habra	48,140	288.84	345.44	56.60
7189	10/15/57	Yreka	Redlands	51,800	310.80	371.71	60.91
7332	10/22/57	Yreka	Santa Ana	52,400	314.40	335.36	20.96
7192	10/23/57	Yreka	Coachella	52,880	359.58	380.73	21.15
7443	11/ 5/57	Yreka	Lancaster	52,500	315.00	336.00	21.00
7487	11/12/57	Yreka	Boron	51,240	307.44	367.69	60.25

Total undercharges amount to

\$685.05

We find it unnecessary to resolve the other charges made in the order of investigation and for that reason express no views or make no findings thereon.

Penalty

This respondent, like many other carriers in the northern California lumber area, was faced with the dilemma of attempting to ascertain whether certain points located at the other end of the state were on-railhead for rating purposes. He relied to a great extent upon information and data supplied to him by the brokers, consignors and consignees involved. Although he endeavored in many instances to insist upon the off-rail differential many of his customers refused to pay. The undercharges that resulted occurred on many shipments when the trucker yielded to customer pressure.

Although we appreciate the perplexing alternatives presented to this carrier the fact remains that the final and ultimate determination of whether a point is on-railhead rests with the respondent.

A permitted carrier does not have to use the rail rates. If he decides to do so and if he chooses to rely upon others for necessary information in order to properly rate his shipments he must suffer the consequences if such data proves to be erroneous. (Investigation of Emmett Aiken, 56 PUC 329, 331) Furthermore it appears that this respondent has been warned about this problem in the past.

Therefore, in view of these circumstances, respondent's operating rights will be suspended for a period of five days and he will be ordered to collect the undercharges hereinbefore found. Respondent will also be directed to examine his records from June 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, he 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. 12-1518 and Highway Contract Carrier Permit No. 47-959 issued to William H. Anderson are hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.
2. That William H. Anderson shall post at his 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 his radial highway common carrier permit and highway contract carrier permit have been suspended by the Commission for a period of five days;

that within five days after such posting William H. Anderson 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 William H. Anderson shall examine his records for the period from June 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, William H. Anderson shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That William H. Anderson 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 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, William H. Anderson 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 William H. Anderson 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 June, 1959.

E. J. Fox
President
W. H. Anderson
W. H. Anderson
Commissioners

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