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ORIGINAL

Decision No. 58713

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

|                                     |   |               |
|-------------------------------------|---|---------------|
| Investigation on the Commission's   | ) |               |
| own motion into the operations,     | ) | Case No. 6201 |
| rates, and practices of UNION TRUCK | ) |               |
| CO., INC.                           | ) |               |

Paul D. Turner, for the respondent.  
Edward G. Fraser, for the Commission  
 staff.

O P I N I O N

On November 10, 1958, the Commission issued an order instituting an investigation on its own motion into the operations, rates, and practices of Union Truck Co., Inc.

A public hearing was held at Ventura on March 6, 1959, before Examiner William L. Cole, at which time the matter was taken under submission.

The order recites that it appears that respondent may have violated Sections 458 and 494 of the Public Utilities Code. The order further states that the investigation was instituted for the purpose of determining whether the respondent violated the Public Utilities Code by failing to adhere to the applicable rates and charges specified in its tariff schedules filed and in effect at the time certain shipments, hereinafter referred to, took place. It is apparent from this order, together with the opening statement of the staff counsel at the hearing, that the purpose of the investigation was to determine whether the respondent assessed improper charges while transporting property as a highway common carrier.

Findings and Conclusions

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

1. At the time the shipments hereinbelow referred to took place, the respondent possessed a certificate of public convenience and necessity to operate as a highway common carrier, a certificate of public convenience and necessity to operate as a petroleum irregular route carrier, a permit to operate as a radial highway common carrier, and a permit to operate as a highway contract carrier.

2. The certificate to operate as a highway common carrier authorizes the respondent to transport property necessary or incidental to the establishment, maintenance, or dismantling of oil, gas, or water wells, pipe lines, refineries, and cracking or casing head plants, and equipment and material used in construction and farming in certain central and southern California areas. This certificate contains a restriction, among others, which provides that transportation performed under the certificate is limited to commodities originating at or destined to an oil well site, construction site, or farm, or originating at or destined to a storage yard.

3. During the period from March through May, 1958, the respondent transported at least twelve different shipments for the Macco Corporation between the shipper's warehouse in Rosamond, California and the shipper's warehouse in Ventura, California. The commodities transported consisted of soda ash, caustic soda, empty wooden pallets, and various other commodities used as ingredients in the preparation of an oil well drilling fluid, commonly referred to as "mud".

4. It cannot be determined from the record what storage facilities other than the warehouses existed at these points of origin and destination.

Respondent's Status Re Shipments

Inasmuch as the purpose of the investigation is to determine whether the respondent violated its tariff provisions while operating as a highway common carrier, it must be established whether the respondent was so operating when it transported the shipments in question. As previously indicated, respondent's highway common carrier certificate contains the restriction that the transportation authorized is limited to commodities originating at or destined to an oil well site, construction site, or farm, or originating at or destined to a storage yard. The Commission has found that the shipments in question originated at and were destined to a warehouse. In order to have been transported by the respondent within the terms of his certificate to operate as a highway common carrier, these shipments must come within the scope of the above restriction.

It is obvious that the shipments do not come within that portion of the restriction dealing with points of origin or destination at oil well sites, construction sites, or farms. Therefore, in order to come within the restriction at all, the shipments must fall within that portion of the restriction pertaining to points of origin or destination at storage yards. It follows that in order for the shipments to come within the restriction, it must be concluded that a warehouse, standing by itself without a surrounding yard, is a storage yard as the latter term is used in the respondent's certificate. It is the Commission's opinion that such a conclusion is not a proper one.

The use of the term "storage yard" in the certificate indicates the Commission's intent to limit this phase of respondent's operating rights to shipments originating at or destined to yards used for storage purposes. On the other hand, under normal usage, the word "warehouse" refers, not to a yard, but to a building used for the storage of commodities. It is the Commission's

conclusion, therefore, that a warehouse, standing by itself, without a surrounding yard, is not a storage yard as the latter term is used in the certificate. In view of this conclusion and based upon the evidence in the present record, the Commission cannot find and conclude that the shipments in question were transported by the respondent within the scope of its certificate of public convenience and necessity to operate as a highway common carrier

It must be ascertained, then, whether with respect to the shipments in question, the respondent was operating as a highway common carrier outside of the scope of his certificate. In this regard, the respondent's secretary-treasurer testified that the transportation in question was in the nature of specialized transportation that it has been performing for this shipper for many years. While there was some testimony as to the frequency of this specialized transportation, the evidence in the record is such that the Commission cannot make a finding on that issue. It is the Commission's opinion that the evidence in this record will not support a finding and conclusion that the respondent was operating unlawfully as a highway common carrier with respect to the shipments in question. In view of the presumption that the respondent was operating lawfully (Section 1963, Code of Civil Procedure), it must be concluded that the respondent transported the shipments in question as a highway permit carrier. It follows that the Commission cannot find and conclude that the respondent was required to assess its transportation charges on the basis of its highway common carrier tariffs.

#### Conclusions

Based upon the foregoing findings and conclusions, therefore, the Commission cannot conclude that the respondent violated the Public Utilities Code by failing to adhere to the applicable rates and charges specified in its tariff schedules filed and in effect at the time the shipments in question took place. Accordingly, this investigation will be discontinued.

The evidence in the record is not sufficient to enable the Commission to make a finding as to the applicable minimum rates and charges prescribed by the Commission for the shipments in question. The record does indicate the possibility, though the Commission does not hereby so find, that the respondent may be assessing charges less than the prescribed minimum. In this regard, the Commission wishes to point out that the record does show considerable laxity on the part of the respondent in assuming its obligations as a highway carrier with respect to these shipments. The record indicates that the respondent was not aware and apparently had given no serious thought to the type of authority under which it was operating in transporting these shipments. The respondent apparently is not familiar with its own highway common carrier tariff provisions, other than those dealing with hourly rates. The respondent is hereby placed on notice that a highway carrier, in being authorized to operate as such, assumes certain duties and obligations. Included in such duties and obligations is a thorough knowledge of its own operating authority and a thorough knowledge of its own tariff. The Commission insists that such duties and obligations be met to the fullest extent.

O R D E R

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

IT IS ORDERED that the investigation instituted in Case No. 6201 is discontinued.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Union Truck Co., Inc.,

and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 7<sup>th</sup> day of July, 1959.

Robert W. Payne  
President  
Edward M. Mitchell  
Matthew J. Goble  
John J. Fox  
Theodore J. Jenner  
Commissioners