

Decision No. 58751

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 MINATTA TRANSPORTATION COMPANY, a corporation.

Case No. 6191

Marvin J. Colangelo, for Minatta Transportation Co.

Karl K. Roos, for the Commission staff.

O P I N I O N

This Commission, on October 15, 1958, issued an order of investigation into the operations, rates, and practices of Minatta Transportation Company, a corporation, which is engaged in the business of transporting property over the public highways as a radial highway common carrier. Pursuant to said order public hearings were held on January 14, 16 and February 13, 1959, at San Francisco, before Examiner James F. Mastoris, at which time evidence was presented and the matter submitted subject to the filing of briefs.

Purpose of Investigation

The purpose of this investigation is to determine whether the respondent violated Section 3667 of the Public Utilities Code by charging and collecting for the transportation of property a rate less than the minimum rate established under Minimum Rate Tariff No. 2.

Staff's Evidence

It is contended by the Commission's staff that this carrier violated specified provisions of said Minimum Rate Tariff No. 2 with respect to twenty-nine shipments of lumber which were

transported between November 1957 and April 1958 from Sonoma County lumber mills to destinations in San Diego and to certain northern California cities. Evidence in support of its allegations was produced indicating that the respondent:

- (1) Applied the incorrect rail rate when using the alternative rail rate provisions of said tariff.
- (2) Failed to assess off-rail rates at points of destination on five movements.
- (3) Failed to assess loading and unloading charges as required under Item 240 of said tariff.

Respondent's Position

It was conceded by the respondent at the outset of the hearing that certain undercharges did, in fact, occur on ten of the twenty-nine shipments, but as to the balance it was claimed that there were no violations. With respect to the disputed nineteen movements the carrier advanced three defenses:

(1) That it charged the correct minimum rate on many of the 18 shipments of lumber transported from Santa Rosa to San Diego but subsequent thereto and prior to remittance by the consignee, permitted the latter to deduct a specified amount from such charges. The amount deducted was paid by the consignee to a third party to satisfy in part a Superior Court judgment in his favor against respondent.

(2) That the method used by the staff to rate the shipments in question does not produce the lowest possible minimum under the alternative application of the tariff.

(3) That it is unnecessary for a carrier's freight bills to show on their face that power loading equipment was utilized when the name of the consignee or consignor indicates to the carrier that power equipment is used for loading or unloading.

Findings

It is not necessary for this decision to pass upon the merits of the respondent's first defense because whether we concurred with or rejected it we would not order this carrier to collect the particular undercharges involved therein under the circumstances here shown. To do so under the facts presented would result in a purposeless and useless act. The antecedent debt was liquidated and certain.

Judgment had been rendered and was final. The carrier would be required to return the money collected from the consignee just as soon as it was received, if the carrier were capable of collecting it at all.

We cannot agree with the respondent's third defense with respect to the meaning of the word "indicate" found in Note 1 to Item 240. It is clear that the shipping documents must display on their face the fact that power equipment was used for loading or unloading. (See Decision No. 58185 dated March 24, 1959, Investigation of Harry Sarkisian.) The carrier was aware of this requirement because it did comply with it on many freight bills. Further, respondent's witness admitted that the failure to show this fact on the freight bills was an oversight.

The second defense raised by respondent requires more detailed analysis. It is found that in the situation presented here the point of origin in Sonoma County was on rail and the destination point at San Diego was off rail. To compute the charge for a shipment under such circumstances it would be usual to assess a common carrier rate from the point of origin to any team track, then an off-rail rate from the team track selected to the point of destination. This would produce the lowest possible combination rate in most instances. The staff so rated the shipments in question, which was logical and in conformance with accepted practice. However, too rigid adherence to such a practice could result in inequities not contemplated originally such as causing a shipper on railhead to pay more for transportation than one located off railhead.

It is established that a permitted carrier may charge common carrier tariff rates in lieu of those prescribed in Commission minimum rate tariffs when to do so would result in a lower total charge for the same transportation. It has been decided also that charges provided in minimum rate tariffs may be combined with common carrier

rates in order to produce lower total charges than the rates established by the tariff. Therefore, a carrier should be allowed to select a railhead wherever it may be if such common carrier rate could be combined with an established minimum rate to result in the lowest possible transportation charge.

Accepting the combination suggested by respondent, of the minimum rate from the Sonoma County lumber mills to Pinole and the common carrier rate between the railhead points of Pinole and San Diego, produces the lowest total charge disregarding whether the origin or destination points, to which the minimum rate applies, are or are not on railhead. While such a construction is most favorable to respondent and will be adopted for purposes of this decision, it does not eliminate all undercharges but only serves to reduce the amount thereof.

In view of the foregoing, we find and conclude that the respondent violated Section 3667 of the Public Utilities Code as charged. As a result undercharges occurred in the manner and amounts set forth in the following table:

Frt. Bill No.	Date	Point of Origin	Point of Destination	Wt. in Pounds	Charge As-sessed by Respondent	Correct Minimum Charge	Under-Charge
4526	1/17/58	Santa Rosa	San Diego	52,320	\$328.25	\$354.69	\$26.44
4555	1/13/58	Santa Rosa	San Diego	52,040	311.71	348.82	37.11
4525	1/14/58	Santa Rosa	San Diego	52,770	311.48	355.77	44.29
4423	11/18/57	Sebastopol	Newark	45,240	90.48	95.00	4.52
4561	1/31/58	Cloverdale	San Diego	51,500	279.70	368.20	88.50
4592	1/27/58	Philo	Healdsburg	52,790	68.63	79.19	10.56
4595	1/30/58	Ukiah	Santa Rosa	43,980	57.17	65.97	8.80
4587	1/22/58	Anderson	San Diego	45,380	316.56	343.79	27.23
4588	1/24/58	Santa Rosa	San Diego	50,480	321.85	350.33	28.48
4558	1/22/58	Anderson	San Diego	45,000	313.91	336.41	22.50
4456	12/10/57	Philo	Santa Rosa	50,650	75.98	81.04	5.06
4531	12/18/57	Ukiah	Fresno	55,470	244.07	260.71	16.64
4484	12/10/57	Santa Rosa	Los Altos	47,270	94.54	108.72	14.18
4486	12/12/57	Santa Rosa	Morgan Hill	46,170	115.43	124.46	9.23
4480	12/ 3/57	Santa Rosa	Palo Alto	50,000	100.00	105.00	5.00
1419	1/31/58	Ukiah	Santa Rosa	43,640	56.73	65.46	8.73
1423	1/31/58	Ukiah	Santa Rosa	49,550	64.41	74.33	9.92
4596	1/28/58	Ukiah	Santa Rosa	45,160	58.71	67.74	9.03
1476	4/ 3/58	Red Bluff	San Diego	51,800	347.06	387.25	40.19
1499	4/ 4/58	Red Bluff	San Diego	49,580	332.19	375.62	43.43
1493	3/21/58	Red Bluff	San Diego	50,400	337.68	381.82	44.14
1486	3/13/58	Red Bluff	San Diego	47,660	356.29	361.05	4.76
1487	3/15/58	Red Bluff	San Diego	54,200	405.19	410.61	5.42
4557	1/20/58	Santa Rosa	San Diego	51,170	319.26	346.85	27.59
4562	2/ 4/58	Anderson	San Diego	51,100	342.37	382.01	39.64

Total undercharges amount to \$581.39.

Penalty

There is no doubt that great pressure was placed upon the respondent by one of his shippers because of the existence of the aforementioned unsatisfied judgment. The carrier attempted to charge the off-rail differential at San Diego and as a result was constantly at odds with said shipper and the lumber brokers who insisted the point of destination was on rail. Despite the desire to liquidate its debt as quickly as possible it ceased hauling for the particular consignee on its own volition because of the refusal to pay the off-rail charges. This, of course, is commendable and is an essential factor in mitigation.

On the other hand, the record clearly discloses the respondent was negligent in computing rates and mileage. In many cases it relied upon erroneous information supplied by lumber brokers and its own customers. It made insufficient attempts to check on the accuracy of figures and facts given to it by such persons and organizations. In other words there was too much reliance upon its shippers. The burden of ascertaining whether such data is correct is upon the respondent. (Investigation of Emmet Aiken, 56 PUC 329, 331.)

Therefore, because of the nature of the violations involved, and the scope of operations of this carrier, respondent's radial highway common carrier permit will be suspended for a period of 4 days and it will be ordered to collect the undercharges specified hereinabove. Respondent will also be directed to examine its records from May 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 finds. 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. 7-564 issued to Minatta Transportation Company is hereby suspended for four consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

2. That respondent 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 radial highway common carrier permit has been suspended by the Commission for a period of four days; that within five days after such posting respondent 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 respondent shall examine its records for the period from May 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, respondent shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That respondent 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 twenty days after the effective date of this order, respondent 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 Minatta Transportation Company and this order shall be effective twenty days after the completion of such service upon respondent.

Dated at San Francisco, California, this 14th day of July, 1959.

Ernest W. Roy
 President

John D. ...

Walter ...

E. Lynn Fox

Theodore ...
 Commissioners