

Decision No. 58956**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
rates, and practices of HIGHWAY)
TRANSPORT, INC.)

Case No. 5940

Berol and Silver by Edward M. Berol, for the
respondents, Highway Transport, Inc., and
Highway Transport Express.
Martin J. Porter, for the Commission staff.O P I N I O N

On May 14, 1957, the Commission issued an order instituting an investigation on its own motion into the operations, rates and practices of Highway Transport, Inc. A public hearing was held on December 11, 1957, at which time the matter was taken under submission. Subsequent thereto a petition was filed requesting that the submission be set aside, the matter be reopened for further hearing, and the Commission issue an amended order of investigation naming Highway Transport Express, a corporation, as an additional respondent. This petition was granted by Decision No. 57560, which decision set forth the amended order of investigation. The purposes of the investigation as set forth in this amended order include the determination whether Highway Transport, Inc., and Highway Transport Express, or either of them, have violated or are violating Section 494 of the Public Utilities Code by charging, demanding, collecting, or receiving a different compensation for the transportation of property, or for a service connected therewith, than the applicable rates and charges specified in their tariff schedules filed and in effect at the time of the transportation. A further public hearing was held in San Francisco on March 2, 1959, at which time the matter was resubmitted.

Findings and Conclusions

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

1. That Highway Transport, Inc., is a common carrier and Highway Transport Express is an express company as defined in Section 219 of the Public Utilities Code and that they have on file a joint tariff with this Commission.

2. That on January 2 and 3, 1957, the respondent, Highway Transport Express, transported various shipments of drugs for McKesson and Robbins from the shipper's drug warehouse in San Francisco to various points in the San Francisco Bay area. On these same days, this respondent also transported various shipments of liquor for the same shipper, from the shipper's liquor warehouse in San Francisco to various points in the San Francisco Bay area. During this period of time, the shipper's drug and liquor warehouses were located at different points in San Francisco. In assessing its charges for this transportation, the respondent consolidated the shipments of drugs and liquor transported on each separate day and treated them as a single shipment.

3. A master shipping document covering all of the shipments of drugs for each day had not been issued at or prior to the time the first shipment of drugs was picked up on that particular day. However, certain quantities of drugs having different points of destination had been grouped together by the shipper and given to the respondent at one time under a master shipping document timely issued. The weight of the drugs comprising each such group amounted to less than 4,000 pounds. Certain of the liquor shipments having different points of destination had also been grouped together by the shipper and given to the respondent at one time under a master

shipping document timely issued. The weight of the liquor comprising each such group amounted to less than 4,000 pounds.

4. The transportation charges assessed by this respondent for all of these shipments of drugs and liquor totaled \$290.02. It is the Commission's finding and conclusion that the correct charges under this respondent's tariff should have been \$366.03. In June, 1958, this respondent rebilled and collected an additional \$78.22 from the shipper for this transportation.

5. At the time of the first hearing in this matter, Highway Transport, Inc., and Highway Transport Express had a total of 362 employees. The total number of shipments handled by both respondents during January 2 and 3, 1957, amounted to 4,579 and the total number of shippers served by both respondents during this two-day period was in excess of 800 per day.

Violations

It is apparent from the foregoing, and the Commission so finds and concludes, that the respondent, Highway Transport Express, by charging and demanding a different compensation for the transportation of property than the applicable rates and charges specified in its tariff schedules filed and in effect at the time of the transportation, violated Section 494 of the Public Utilities Code.

These violations resulted because of the improper consolidation of separate shipments for billing purposes. The drug and liquor shipments could not be consolidated because split pickup privileges are not accorded under the respondent's tariff on multiple lot split delivery shipments. All of the drug shipments for each day could not be consolidated for the reason that a master shipping document covering such shipments had not been issued at or prior to the time the first drug shipment was picked up on that respective day.

As indicated previously certain quantities of drugs having different destinations were grouped together by the shipper and given to the respondent at one time under shipping documents timely issued, each of which groups weighed less than 4,000 pounds. With respect to two of such groups, the charges computed on the basis of a 4,000-pound split delivery shipment were less than the charges computed on the basis of treating each quantity of drugs having a different destination as a separate shipment. For this reason these two groups were considered as split delivery shipments. With respect to the remaining groups, however, the charges computed on the basis of treating each quantity of drugs having a different destination as a separate shipment resulted in the lower charges and, therefore, such groups must be rated accordingly. This latter situation likewise exists with respect to the liquor shipments which were given to the respondent at one time.

It is the Commission's conclusion that the certificate of public convenience and necessity to operate as an express corporation of Highway Transport Express be suspended to the extent that for a period of three days it shall not transport any shipments for McKesson and Robbins. The evidence shows, however, that the respondent's operations are rather extensive in nature involving in excess of 800 shippers per day and approximately 2,000 daily shipments, whereas the only violations found involved just a single shipper. The evidence indicates that for the most part, the express company's billings were in order and based upon its published tariffs. The representative of the Commission staff who made the investigation of the company's records testified that the company's operation was, comparatively speaking, a very clean operation. There is no evidence in the record to indicate that the express company has been

the subject of any prior Commission disciplinary action. With respect to the financial condition of Highway Transport, Inc., and Highway Transport Express, the vice president of the two companies testified on the first day of hearing that the companies, during the current years, have operated at a loss of approximately \$147,000. In view of this evidence, it is the Commission's conclusion that the imposition of the three-day period of partial suspension should be deferred and suspended for a period of one year. If the Commission finds at any time during the one-year period that Highway Transport Express is failing to comply with all orders, rules and regulations of the Commission, the three-day period of partial suspension will be imposed, together with whatever additional penalty the Commission deems necessary. If no further order of the Commission is issued affecting this suspension within one year from the date of issuance of this decision, the three-day period of suspension shall expire.

Highway Transport Express will also be required to examine its records for the purpose of ascertaining if additional incorrect charges have been made. In this respect it is to be noted that the Commission's finding and conclusion that no master shipping document for all of the drug shipments on any particular day was issued at or prior to the time the first drug shipment was picked up for that day, applies only to the shipments in question in this matter. Whether or not such a document was timely issued with respect to other shipments, must of course be determined from the facts surrounding such shipments.

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 to operate as an express corporation issued to Highway Transport Express is partially suspended in that as an express corporation it shall not serve McKesson and Robbins or its successors or agents, either as consignees or consignors for a period of three days. This three-day period of suspension, however, shall be deferred and suspended pending further order of this Commission. If no further order of the Commission is issued affecting this suspension within one year from the date of issuance of this decision, the three-day period of suspension shall expire.

2. That Highway Transport Express shall examine its records for the period from July 1, 1957 to the present time for the purpose of ascertaining if any additional undercharges or overcharges have occurred other than those mentioned in this decision.

3. That within ninety days after the effective date of this decision, Highway Transport Express shall file with the Commission a report setting forth all undercharges or overcharges found pursuant to the examination hereinabove required by paragraph 2.

4. That Highway Transport Express is hereby directed to take such action as may be necessary to collect the amounts of any undercharges or refund the amounts of any overcharges found after the examination required by paragraph 2, and to notify the Commission in writing upon the consummation of such collections and refunds.

5. That, in the event charges to be collected as provided in paragraph 4 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Highway Transport Express 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 action, 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 Highway Transport, Inc., and Highway Transport Express and this order shall be effective twenty days after the completion of such service upon both respondents.

Dated at San Francisco, California, this 1st day of September, 1959.

Ernest R. Tracy

President

Walter E. Hartill

William J. Poole

E. L. Fox

Theodore H. Jenner

Commissioners