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ORIGINAL

Decision No. 59109

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, ) Case No. 6203  
rates and practices of MILES MOTOR )  
TRANSPORT SYSTEM. )

Edward Berol, of Berol & Silver, for respondent.  
Karl K. Roos, for the Commission staff.

O P I N I O N

On November 10, 1958, this Commission issued an order of investigation into the operations, rates and practices of Miles Motor Transport System, a corporation, which is engaged in the business of transporting property over the public highways of this state as a highway common carrier, radial highway common carrier, highway contract carrier and city carrier. Pursuant to said order public hearings were held on March 4, 1959, and May 11, 1959, in San Francisco before Examiner James F. Mastoris. This matter was submitted on July 10, 1959, upon receipt of briefs.

Purpose of Investigation

The purpose of this investigation is to ascertain whether the respondent violated Section 494 of the Public Utilities Code by charging and collecting a different compensation for the transportation of property than the applicable rates and charges specified in its schedules filed and in effect at the time the transportation was performed.

Staff's Position

Evidence was offered by the staff of the Commission indicating that the respondent, while performing transportation primarily of corrugated boxes and cartons between northern

California points during the period from July 1956 to May 1957, improperly rated some 18 shipments contrary to the provisions of its tariff on file with the Commission. Testimonial and documentary evidence was produced showing that this carrier:

(1) Improperly consolidated separate shipments while engaged in multiple lot pickup and split delivery operations. Most of the shipments assailed by the staff consisted of this type of violation.

(2) Assessed distance commodity and class carload rates lower than the rates prescribed by its tariff.

(3) On one shipment failed to assess the off-rail differential.

Respondent's Evidence

The respondent conceded that the staff's method of rating was accurate on 16 of the 18 shipments involved in this proceeding. Mitigating evidence was presented that the errors and mistakes that occurred as to these uncontested movements were the result of inadvertence and carelessness on part of the rate clerks and dispatchers employed to rate said shipments. Most of the shipments were transported for one particular shipper who tendered a single shipping document covering an entire shipment which was tendered to the respondent and ready for transportation on a given day. However it was claimed said employees, without the knowledge of management, in dispatching trucks failed to arrange for pickups of each of these shipments within the two-day period set forth in the respondent's tariff. Such mistakes were caused, in part, because of the large volume of freight transported for the shipper involved. Handling approximately 20 hauls a day for this shipper the carrier made pickups of freight seven days a week including all holidays but one and, during the time the transportation in issue was performed,

claims it was unable to supply sufficient equipment to carry the total shipments within the prescribed period. Recently respondent's management has taken steps to correct and alter this procedure.

The carrier requests that the shipper be relieved of undercharge payments because said shipper did not participate in the dispatchers' decision but assumed that each of the shipments tendered had been picked up as ordered on the shipping document.

As to the two disputed shipments the respondent alleges that the staff's computation of constructive mileage on split delivery movements originating more than 70 miles from the Oakland and San Francisco pickup and delivery zones was inaccurate in that the tariff permits the computation of a lower San Francisco-Oakland average mileage.

#### Findings

In view of the evidence of record we find for the Commission's staff as to all 18 shipments. It is apparent the respondent misconstrued its tariff with respect to the contested shipments moving into the San Francisco-Oakland pickup and delivery zones and inadvertently misapplied a Commission staff informal opinion on the tariff provision in question. As actual deliveries of freight were made in both the San Francisco pickup and delivery zone and the Oakland pickup and delivery zone the average of the various distances to all the points of destination was  $121\frac{1}{2}$  constructive miles which takes a fifth-class carload rate of  $30\frac{1}{2}$  cents per 100 pounds. Respondent's computation, based upon deliveries to the Oakland zone only, resulted in a lower average mileage and therefore in a lower rate.

Accordingly we find that the respondent violated Section 494 of the Public Utilities Code by assessing and collecting a charge other than the applicable charge provided by its published

tariff. Additional relevant facts relative to the shipments in question, together with our conclusions concerning the correct tariff charges for these shipments, are set forth in the table that follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed by Respondent</u>	<u>Correct Tariff Charge</u>	<u>Undercharge</u>
315456	7/ 8/56	\$165.62	\$220.00	\$ 54.38
315448	7/10/56	186.80	191.71	4.91
315549	7/10/56	154.78	198.05	43.27
304035	7/10/56	315.73	399.06	83.33
315556	7/17/56	171.40	220.00	48.60
315915	7/26/56	224.85	311.22	86.37
316259	8/ 3/56	172.27	240.00	67.73
316260	8/ 3/56	79.74	96.00	16.26
316524	8/10/56	190.62	230.00	39.38
317918	9/15/56	56.00	112.00	56.00
318151	9/21/56	168.46	236.58	68.12
304813	9/22/56	175.69	222.68	46.99
304827	9/28/56	338.74	421.70	82.96
304959	10/ 4/56	252.18	334.52	82.34
319474	10/23/56	110.96	149.24	38.28
319752	10/31/56	157.34	220.00	62.66
319756	10/31/56	84.38	168.00	83.62
329627	5/15/57	153.50	167.61	<u>14.11</u>
Total undercharges				\$979.31

#### Penalty

A highway common carrier must adhere strictly to its tariff schedule and must exercise appropriate supervision and control over its dispatchers and rate clerks. However, there is no evidence of an intent on the part of the respondent to deliberately and wilfully violate its tariff. Further, the percentage of mis-ratings was small compared to the tonnage of freight transported by the carrier during the period in question. Therefore, in view of these mitigating circumstances, it is the Commission's conclusion that respondent's operating rights should be suspended for a period of three days, but that this suspension should be limited to transportation for Fibreboard Products, Inc., Glass Container Corporation, Masonite Corporation and Tri-Valley Packing Association and should

be deferred and suspended for a period of one year. If the Commission finds at any time during the one-year period that respondent 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. Respondent will also be required to examine its records for the purpose of ascertaining if additional incorrect charges have been made.

Respondent will be ordered to cease and desist from future violations of its tariff and it will be further ordered to collect the undercharges hereinabove found. No reason has been made apparent why it should be relieved from undercharge collections.

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 Miles Motor Transport System is hereby directed to cease and desist from charging, demanding, collecting, or receiving a different compensation for the transportation of property than the applicable rates and charges prescribed in its tariff.

(2) That the operative rights of respondent are partially suspended in that it shall not serve Fibreboard Products, Inc., Glass Container Corporation, Masonite Corporation or Tri-Valley Packing Association or their 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.

(3) That respondent is hereby directed to take such action as may be necessary to collect the amounts of undercharges found in the preceding opinion and to notify the Commission in writing upon the consummation of such collections.

(4) That Miles Motor Transport System shall examine its records for the period from June 1, 1957, commencement date of record examination, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

(5) That within ninety days after the effective date of this decision, Miles Motor Transport System shall file with the Commission a report setting forth all undercharges found pursuant to the examination required by paragraph 4.

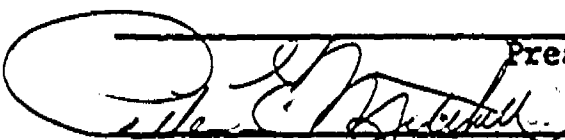

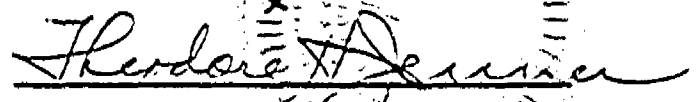

(6) That Miles Motor Transport System is hereby directed to take such action as may be necessary, including court proceedings, to collect the amounts of undercharges set forth in the preceding opinion, together with any additional undercharges found after the examination required by paragraph 4 of this order, and to notify the Commission in writing upon the consummation of such collections.

(7) That, in the event charges to be collected as provided in paragraph 6 of this order, or any part hereof, remain uncollected one hundred twenty days after the effective date of this order, Miles Motor Transport System 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 Miles Motor Transport System and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 6<sup>th</sup> day of October, 1959.

 President  
  
  
 Commissioners

Everett C. McKeage  
Commissioner Matthew J. Dooley, being  
necessarily absent, did not participate  
in the disposition of this proceeding.