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Decision No. 59785

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 ROSS TRUCKING COMPANY, a corporation.	)))))	Case No. 6216

Marvin J. Colangelo, for respondent.
Samuel Reisman and Bertram H. Ross, for Smith-Robbins Lumber Co.; and Robert B. Curtiss, for The Atchison, Topeka and Santa Fe Railway Company, interested parties.
J. Calvin Simpson, for the Commission staff.

O P I N I O N

On January 13, 1959, this Commission issued an order of investigation into the operations, rates and practices of Ross Trucking Co., a corporation, which 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 before Examiner James F. Mastoris in San Francisco on April 8 and 9, 1959 and January 18, 1960, and in Los Angeles on June 8 and 9 and August 19 and 20, 1959.

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 compensation less than the applicable charges prescribed by Minimum Rate Tariff No. 2.

(2) Whether any of its officers, agents, or employees have acted in violation of the said Public Utilities Code, Sections 3664 and 3667, by failing to adhere to other provisions and requirements of Minimum Rate Tariff No. 2.

Staff's Evidence

Evidence was offered by the staff of the Commission that the respondent, while carrying lumber between northern and southern California points during the period from October to December 1957, improperly rated nineteen shipments contrary to the provisions of the aforementioned minimum rate tariff. The carrier assessed the correct rail rate on all movements between the points involved but, it is claimed, failed to assess the off-rail charge at points of destination.

Respondent's Position

The respondent conceded that ten of the nineteen shipments in issue were misrated as charged. The remainder, however, were strongly contested, the carrier claiming that the points of destination as to these shipments were, in fact, on railhead. As a result it contends the off-rail assessment was unnecessary.

Findings

Based upon the evidence of record we find and conclude:

(1) That as to the transportation represented by the following freight bills (Parts 5, 6, 7, 9, 18 and 19 of Exhibit No. 2): F.B. 17614, F.B. 16476, F.B. 17298, F.B. 17260, F.B. 16748 and F.B. 16857, the consignee, the Smith-Robbins Lumber Co. at Los Angeles, was on railhead as that term is defined in Item 10 of said Minimum Rate Tariff No. 2. This yard, located between Victoria and Crenshaw Boulevards in a commercial and industrial section of Los Angeles and adjacent to the Harbor District main track of The Atchison, Topeka and Santa Fe Railway Company, constituted the principal subject of controversy between the staff and the respondent, with the greater portion of the extended hearings being consumed with testimony relating to the use made of a strip of land between the tracks and the boundary line of said lumber yard. A spur track branching off from

the aforementioned main track runs parallel to this yard, and an adjoining lumber yard, in an easterly direction to, and beyond, Crenshaw Boulevard. Contiguous to, and extending approximately 200 feet alongside thereof, is a raised unloading platform with a ramp on the westerly end leading down to a paved road opposite the entrance of the consignee's property. The distance between the end of the ramp and said entrance is approximately twenty feet. The strip of land in dispute involves the aforementioned paved road, the unloading facility and the surrounding ground.

Santa Fe railroad's right-of-way extends along the entire length of land between the aforementioned boulevards and encompasses this paved road, the aforementioned platform and, in addition, bisects a substantial portion of the consignee's lumber yard. The paved roadway has been traveled upon infrequently by automobiles, although signs were posted at the opposite entrances notifying the public that, in effect, the road was railroad property.

No written lease or agreement existed between the consignee and the railroad relative to the use of any portion of the aforementioned right-of-way during, and prior to, the time the transportation in issue was performed. No officer or official of said railroad gave written permission or officially authorized the lumber yard owners to use this right-of-way or any of the aforementioned facilities located on it. However, we are satisfied from the evidence that the consignee nevertheless used portions of this easement for all purposes related to and connected with its lumber business. Delivery of lumber by rail at this spur track has been taken by predecessors of said consignee as far back as 1910. Delivery of lumber has been made to this particular consignee at the aforementioned unloading platform since 1938 when said dock was constructed. Except for three or four days a year when horses are unloaded for the Hollywood Park Racetrack, the Smith-Robbins lumber yard has been, for all practical purposes, the exclusive user of this platform. In addition, buildings, burners and fences were built and established on the

western portion of the easement. Not only was the lumber yard proper and the aforementioned unloading facility used by the consignee, but the area in between was likewise so utilized. Lumber which had been received either by rail or truck was stored on all portions of the western end of the paved easement, at times being placed next to the spur track and the ramp leading to the platform. Equipment belonging to the consignee was also stored here. In addition, loading and unloading of trucks occurred on this particular area. Forklift trucks and carriers were used by the consignee to move the delivered lumber from the platform or from the storage location on the paved road into or out of the yard proper. Thus, it appears the entire space -- the lumber yard, the platform and the paved area in between -- was used as one piece of property for the loading and unloading of freight cars and trucks and for the storage of lumber. The evidence further discloses that the expense of unloading lumber from the freight car at the platform and unloading lumber from a truck alongside the platform would be approximately the same. There was no measurable additional service required to be applied to the rail shipments.

We are concerned primarily with the use made of the property and not with questions of what should have been done by the consignee or questions of legal title. Whether or not adverse possession is evident or whether prescriptive rights have been acquired are matters for the courts to decide. If the consignee, in fact, used this land as a location at which lumber was tendered for physical delivery into his control and possession, then such land constitutes a "receiving area" within the meaning of that term as it is utilized in the definition of "Point of Destination" in Item 10 to Minimum Rate Tariff No. 2. Accordingly, this particular yard was on "railhead" as that term is used in the aforementioned Item 10 to said Minimum

Rate Tariff No. 2 and thus the rail shipments and the truck shipments have the same point of destination. Therefore, transportation performed by a truck under these circumstances would be the "same transportation" which would have been performed by a railroad. Moreover, even if we did not consider the fact of adverse use, our finding in this regard would not be changed because there is ample evidence disclosing that this use of the unloading facility and surrounding ground was permissive. In addition to a verbal understanding that the consignee would not "be moved off if they use the facilities" of Santa Fe, it appears the switchman and yard switch crews did, in fact, pursuant to requests from the consignee, spot cars for unloading for said lumber yard at the aforementioned platform.

(2) That as to Freight Bill 16178 (Part 16 of Exhibit No. 2) we find that this point of destination was likewise on railhead. This lumber yard consists of two widely separated locations in the City of San Gabriel, one off-railhead and the other on-railhead. It was stipulated that the truck in question carried the shipment to the lumber yard which possessed the spur track even though the freight bill listed the other yard as the point of destination. The actual facts of the movement control the rating under such circumstances and not the freight bill manifestations. The carrier may have violated the documentation requirements of Item 255 of said Minimum Rate Tariff No. 2 by failing to designate the precise point of destination. However, we make no finding of such violation as such was not charged in the order instituting investigation.

(3) That as to Freight Bills Nos. 17584 and 17565 (Parts 8 and 17 of Exhibit No. 2) we find that the National Lumber Company of National City was off-railhead as charged. The only evidence from the record shows that the nearest track in question to the consignee was a switching track and was not used for the loading or unloading of freight cars. The nearest team track appears to be approximately

1000 feet from the apparent boundary line of the lumber yard (Exhibit No. 4). Therefore, undercharges resulted as follows:

F.B. 17584	Rate and Charge of carrier	$276.72
	Minimum Rate and Charge	312.50
	Undercharge	$ 35.78
F.B. 17565	Rate and Charge of carrier	$312.90
	Minimum Rate and Charge	353.36
	Undercharge	$ 40.46

(4) That in view of the evidence of record, we find that as to the balance of the shipments listed in the order instituting investigation the respondent corporation violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a compensation less than the prescribed minimum established by this Commission in Minimum Rate Tariff No. 2.

Penalty

On numerous occasions in the past we have declared that the carrier has the prime duty of ascertaining the applicable rate to be charged and that it cannot be relieved of this burden by relying upon information supplied by its shippers and others connected with the transportation in question. Such rule applies to this case. However, in this matter we are impressed with the evidence received in mitigation demonstrating the determined and diligent efforts on the part of this carrier to obtain the correct data from southern California consignees regarding railhead information at points of destination. From its offices at the northern part of the State the carrier's president, among other things, made many verbal and written inquiries as to the precise nature of the rail facilities in issue;[1/] he checked sources given to him by brokers and shippers; he combined shippers' statements with his truckdrivers' observations and maintained maps and files. It appears that under the circumstances the measures taken were reasonable and appropriate and must be considered in determining the penalty to be imposed.

1/ Exhibits 7, 8, 9.

Therefore, in view of all the facts, including the foregoing evidence in mitigation and the fact that the percentage of violations was comparatively small in relation to the total freight moved during the period of the staff's investigation, respondent's permits will be suspended for a period of five days; however, the imposition of said suspension will be deferred and suspended for a period of one year. During this one year period, respondent's operations will be carefully examined by the Commission to ascertain whether it is complying with all orders, rules, and regulations of the Commission. If at the end of the one-year period the Commission is satisfied that respondent is complying with all such orders, rules and regulations, the deferred portion of said suspension will be vacated without further order of the Commission. However, if the Commission finds at any time during the one-year period that respondent is failing to comply with all such orders, rules and regulations, the five-day period of suspension will be imposed, together with whatever additional penalty the Commission deems necessary.

In light of the fact that undercharges on those shipments conceded by the carrier to have been improperly rated have already been collected prior to the hearings in this matter, nothing further need be required by this Commission. However, the respondent will be ordered to collect the undercharges hereinbefore found as to Freight Bills Nos. 17584 and 17565. Furthermore, respondent will also be directed to examine its records from January 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 has found. Respondent will also be directed to collect any such additional undercharges.

O R D E R

Public hearings having been held and based upon the evidence therein adduced,

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 52-405 and Highway Contract Carrier Permit No. 52-424 issued to Ross Trucking Co., a corporation, are hereby suspended for five consecutive days; however, execution of said suspension will be deferred and suspended pending further order of the Commission. If no further order of the Commission is issued affecting said suspension within one year from the date of issuance of this decision, said suspension shall be vacated.

(2) That respondent shall examine its records for the period from January 1, 1958, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

(3) 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 2.

(4) 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 Finding No. 3 to the decision that precedes this order, together with any additional undercharges found after the examination required by paragraph 2 of this order, and to notify the Commission in writing upon the consummation of such collections.

(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, 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 Ross Trucking Co., and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 15th day of March, 1960.

President

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.