

ORIGINALDecision No. 59892

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, and practices of MARINO)
 BROS. TRUCKING CO., a corporation.)

Case No. 6342

George & Dillon, by Marquam C. George, for respondent.Martin J. Porter, for the Commission staff.O P I N I O N

This Commission, on September 1, 1959, issued an order of investigation into the operations, rates and practices of Marino Bros. Trucking Co., a corporation, which is engaged in the business of transporting property over the public highways for compensation as a highway common carrier, highway contract carrier, radial highway common carrier and as a city carrier. In accordance with said order public hearings were held before Examiner James F. Mastoris on December 2, 1959 in Stockton and on December 18, 1959 and January 8, 1960 in San Francisco.

Purpose of Investigation

The purpose of this investigation is to determine whether this respondent violated Section 3667 of the Public Utilities Code by charging and collecting for the transportation of property as a highway permit carrier a rate less than the minimum established under Minimum Rate Tariffs Nos. 2 and 8.

Findings

Based upon the evidence of record, we hereby find and conclude:

(1) That the applicable minimum rate tariffs, supplements and tables have been served upon the respondent. This issue was bitterly contested--the carrier claiming that no service was proved under Section 3735 of the Public Utilities Code because the Commission staff witness, the senior clerk of the Rate Service Unit of the Licensing Section of the Transportation Division in charge of tariff distribution, conceded during cross-examination that she did not personally deposit the required documents in the mail. However, she did testify as to the procedure followed in preparing, assembling, addressing, and mailing tariffs and supplements to carriers affected thereby and to the fact that she controlled and supervised those individuals who performed the physical act of depositing the applicable documents into the mail bags. There was nothing in the evidence showing that the usual and ordinary routine was not adhered to in this case. Sections 3737, 3735 and 3733 of the Public Utilities Code are satisfied when the employee of the Commission making the required certificate of service had immediate supervision and control over subordinates or individuals who actually deposited the applicable documents in the mail. Receipt of the tariffs and the supplements by the carrier is based upon the provisions of Public Utilities Code Section 3734 and the presumptions of Section 1963 of the Code of Civil Procedure.

Moreover, other evidence of record also discloses that the carrier received and had in its possession, at the time the transportation was performed, all the governing tariffs and supplements.

(2) That as to shipments reflected in Parts 1 through 7 of Exhibit 6, received into evidence at the hearings, the Commission staff's determination of the applicable charges is controlling. The

respondent's contention that the higher rate provided in Minimum Rate Tariff No. 2 for transportation of fresh meat between Stockton and Los Angeles than between Sacramento and Los Angeles contravenes the long and short haul clause of the California Constitution is without merit. We need not, at this time, pass upon the question, raised at the hearings, of whether the particular point of origin reached the status of an intermediate point "over the same line or route" within the meaning of the Constitution because the higher rate specified in the tariff is authorized by the Commission. In administering its power in accordance with the principles embodied in said constitutional provision the Commission, for the reasons indicated when Minimum Rate Tariff No. 2 was established, has sanctioned the higher charge for the shorter distance under the circumstances and has prescribed the extent to which permitted carriers can depart from the constitutional prohibition.^{1/}

Violations took place because the consignor was outside the pickup and delivery limits of Stockton and thus could not qualify for the intermediate application of the territorial rate. As a result undercharges occurred as set forth in the Table of Undercharges, described in Appendix A attached to the order that follows this decision.

(3) That as to the shipment of wine and brandy represented in Freight Bill No. 82968 (Part 8 of Exhibit 6) the rate of 38 cents per 100 pounds constituted the minimum rate and charge for the entire haul. In view of the fact that the evidence discloses that the brandy referred to originated from grapes, a 5th class rating, similar to that of wine, as provided under the language "liquors,

^{1/} Art. XII, Section 12, California Constitution. Rates--Highway Carriers, 41 CRC 671 (Decision 31606, C 4246), 689-690, 721, 730 (paragraph 12).

vinous" of Item 360 of Minimum Rate Tariff No. 2 applies to the total weight of 34,307 pounds. A small undercharge results in the amount set forth in said Appendix A.

(4) That as to the movements represented by Freight Bills Nos. 82969 and 83037 (Parts 9 and 10 of Exhibit 6) we concur with the staff's interpretation in both cases. Although there was only one physical point of destination, the shipments were delivered to more than one consignee. Accordingly, we find that undercharges occurred in the amounts set forth in said Appendix A.

(5) That as to transportation performed under freight documents represented in Part 12 through 21 of said Exhibit 6, undercharges occurred in the amounts set forth in said Appendix A. On separate shipments of corn moving between Tracy and San Francisco the staff computed the "average mileage" necessary to arrive at the applicable rate pursuant to the provisions of Item 110 of Minimum Rate Tariff No. 8, Subsection (c). However, the lesser mileage resulting from the use of this section was disallowed with respect to split delivery shipments into Oakland and San Francisco upon the premise that Item 180 of the same tariff prohibits the use thereof. However, we find nothing in said Item 180 which can be so construed. Accordingly, split delivery shipments may take the rate applicable to the same mileage as the separate shipments under these circumstances.

(6) That as to shipments represented by Parts 22 and 23 of said Exhibit 6, undercharges resulted in the manner and amount as alleged by the Commission's staff. The long and short haul clause of the California Constitution is inapplicable here for the reasons enunciated in Finding (2). Accordingly, undercharge collections will be ordered in the amounts set forth in said Appendix A.

(7) That in view of the foregoing findings we find and conclude that the respondent corporation violated Section 3667 of the Public Utilities Code by charging and collecting for the transportation of property a rate less than the minimum prescribed under Minimum Rate Tariffs Nos. 2 and 8.

Penalty

In light of the nature and type of violations and the other evidence of record, the respondent's radial highway common carrier and highway contract carrier permits will be suspended for a period of four 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 four-day period of suspension will be imposed, together with whatever additional penalty the Commission deems necessary. In addition, this carrier will be ordered to collect the undercharges described in the aforementioned table set forth in Appendix A. Furthermore, respondent will also be directed to examine its records

from January 1, 1959 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

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

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 39-2676 and Highway Contract Carrier Permit No. 39-5004 are hereby suspended for four 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 Marino Bros. Trucking Co. shall examine its records for the period from January 1, 1959 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in Appendix A attached to this order.

(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 Appendix A attached to this order, together with any additional undercharges found after the examination

APPENDIX A

TABLE OF UNDERCHARGES

| <u>No. of Freight Bill</u> | <u>Dated</u> | <u>Rate and Charge Assessed by Respondent</u> | <u>Correct Minimum Charge</u> | <u>Undercharge</u> |
|------------------------------------|--------------|---|---------------------------------------|--------------------|
| 83125 | 11/ 6/58 | \$205.98 | \$225.59 | \$ 19.61 |
| 83150 | 11/10/58 | 223.34 | 244.61 | 21.27 |
| 83151 | 11/12/58 | 231.42 | 253.46 | 22.04 |
| 83174 | 11/17/58 | 210.88 | 230.97 | 20.09 |
| 83175 | 11/19/58 | 250.39 | 274.23 | 23.84 |
| 83176 | 11/19/58 | 220.10 | 241.06 | 20.96 |
| 83184 | 11/20/58 | 237.28 | 259.88 | 22.60 |
| 82968 | 10/ 7/58 | 126.94 | 130.37 | 3.43 |
| 82969 | 10/ 9/58 | 143.65 | 161.54 | 17.89 |
| 83037 | 10/21/58 | 162.73 | 198.47 | 35.74 |
| 83179 | 11/20/58 | 149.14 | 153.17 | 4.03 |
| 82949 | 10/ 5/58 | 74.36 | 78.18 | 3.84 |
| 83011 | 10/16/58 | 63.00 | 66.60 | 3.60 |
| 83043 | 10/21/58 | 52.30 | 54.64 | 2.34 |
| 83044 | 10/22/58 | 75.75 | 97.50 | 21.75 |
| 83067 | 10/22/58 | 62.66 | 65.47 | 2.81 |
| 83093 | 10/28/58 | 42.68 | 43.36 | .68 |
| 83099 | 10/30/58 | 35.70 | 46.50 | 10.80 |
| 83115 | 11/ 3/58 | 60.53 | 75.78 | 15.25 |
| 83032 | 10/19/58 | 102.10 | 105.22 | 3.12 |
| 83066 | 10/26/58 | 88.20 | 93.25 | <u>5.05</u> |
| Total Undercharges | | | | \$280.74 |

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 Marino Bros. 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 5th day of April, 1960.

[Signature]
President

[Signature]

[Signature]

[Signature]

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Commissioners