

Decision No. 61890

**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 O. K.  
TRUCKING CO., a corporation, and  
JOHN J. LEONARDINI, SR., doing  
business as LEONARDINI SERVICE  
TRANSPORTATION.

Case No. 6408

Edward M. Berol, for respondents.

William Bricca, for the Commission staff.

O P I N I O N

On January 12, 1960, the Commission issued an order instituting an investigation into the operations, rates and practices of O. K. Trucking Co., a corporation, and John J. Leonardini, Sr., doing business as Leonardini Service Transportation, for the purpose of determining, among other things, whether:

1. Respondents are operating a device by which transportation of property between points within this State is performed at rates less than those prescribed by the Commission as minimum or at variance with filed tariff rates.

2. Respondents should be ordered to cease and desist from utilizing a radial permit issued to John J. Leonardini, Sr., doing business as Leonardini Service Transportation, as a device to charge, demand, collect and receive a different compensation for the transportation of property, or for any service in connection therewith, than the applicable rates, fares and charges specified in the tariff of O. K. Trucking Co.

A public hearing was held before Examiner James Mastoris on June 10, 1960, at San Francisco. Further hearing was held before Examiner Thomas E. Daly, also at San Francisco, on February 20, 1961, at which time the matter was submitted.

The record indicates that O. K. Trucking Co., (hereinafter at times referred to as O. K.) a California corporation, is a certificated carrier primarily engaged in the transportation of fresh fruits and vegetables; that the stock in O. K. was held by Mr. and Mrs. John J. Leonardini, Sr.; that Mrs. Leonardini died in 1952; that her 50 percent stock interest is held in trust by the Bank of America for her two children, John J. Leonardini, Jr., and Shirley Leonardini Gettas; that in addition to its certificated authority O. K. holds permits as a Radial Highway Common Carrier, Highway Contract Carrier and a City Carrier; that in 1954 John J. Leonardini, Sr., was issued a Radial Highway Common Carrier permit, which he used in the conduct of business as Leonardini Service Transportation (hereinafter at times referred to as Leonardini); that as a result of investigations of respondents' records made during April, May and August, 1959, by members of the Commission staff, an order of investigation was instituted; that during the course of hearing on June 10, 1960, evidence, taken from Commission records kept in the usual course of business, was introduced to show that both respondents had been served with copies of appropriate minimum rate tariffs; that in addition thereto copies of freight bills and underlying documents taken from respondents' files were received in evidence; that said documents related to 32 shipments, which assertedly violated either filed tariff rates of O.K. or established minimum rates; that of said shipments, 11 were transported by Leonardini and 21 were transported by O. K.; that subsequent to the hearing on June 10, 1960, respondent John J. Leonardini, Sr., died and his stock interest in O. K. has been equally

divided between his two children John J. Leonardini, Jr., and Shirley Leonardini Gettas; that during the hearing on February 20, 1961, it was determined that John J. Leonardini, Jr., as administrator of his father's estate, by letter dated September 7, 1960, requested that the Radial Highway Common Carrier permit issued to his father be revoked; that on September 13, 1960, the Commission complied by revoking Radial Highway Common Carrier Permit No. 1-8863 issued to John J. Leonardini, doing business as Leonardini Service Transportation, in 1954.

The record further indicates that the staff, on February 20, 1961, introduced rate expert testimony and exhibits relating to O. K. only; that the staff introduced Exhibit 16, which is a summary of the shipping data taken from the records of O.K. together with statements as to the applicable tariff or minimum rates for the 21 shipments considered; that with respect to one shipment from Los Angeles to San Leandro O. K. deviated from its filed Tariff No. 7 by undercharging in the amount of \$61.39; that in a shipment from Santa Paula to San Leandro O. K. again deviated from its filed Tariff No. 7 by undercharging in the amount of \$1.80; that in a third instance O. K. deviated from its filed Tariff No. 7 by treating separate shipments as a multiple lot shipment without issuing a single bill of lading or other shipping document as required, thus resulting in an undercharge of \$13.40; that the other 18 shipments involved the return movements of empty pallets and banana tubs from the Cardinal Store in Sacramento to the Lucky Store in San Leandro, for which no charges were made; that said 18 shipments amount to \$347.21 in undercharges.

John J. Leonardini, Jr., testifying on behalf of O. K. stated that the operation in question has been conducted by the family for many years with his late father having exclusive control over management and the rating of shipments; that since he and his sister have acquired control he has hired a rate expert to rate all shipments; that it is their intention to operate as a corporation only;

that during the harvest season from April to September they usually operate 184 pieces of equipment and hire 85 employees; that during said period fresh fruits and vegetables must be moved as expeditiously as possible and that delays of 3 or 4 days could have the effect of closing certain canneries.

By late-filed Exhibit 17 O.K. has indicated that all undercharges have been billed and are in the course of being collected.

It would appear from the record that the operations of O.K. and Leonardini were, for all practical purposes the activities and operations of one person, John J. Leonardini, Sr. In view of his death, however, the Commission is of the opinion that it would serve no useful purpose to pursue the possibility of an alter ego relation. Therefore, the motion to dismiss the investigation in so far as it applies to the late John J. Leonardini, Sr., will be granted.

O. K. being a legal entity and being able to act only through its corporate representatives is necessarily responsible for their course of conduct. In this instance O. K. violated the provisions of its Tariff No. 7 on several shipments moving between certificated points. It violated the provisions of Minimum Rate Tariff No. 2 on 18 shipments moving under permitted authority between Sacramento and San Leandro. The operating authority of O.K. will therefore be suspended for a period of five days.

#### O R D E R

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

#### IT IS ORDERED:

1. That the certificated operative rights of O.K. Trucking Co. acquired by Decision No. 49978 and those granted by Decision No. 50585 in addition to Radial Highway Common Carrier Permit

No. 1-181, Highway Contract Permit No. 1-550 and City Carrier Permit No. 1-7461 are suspended for five consecutive days beginning at 12:01 a.m. on the second Monday following the effective date of this order, and that it shall not lease the equipment or other facilities used in operations under this operating authority for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. That O. K. Trucking Co., 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 adial Highway Common Carrier permit, Highway Contract Carrier permit, City Carrier permit and certificated authority have been suspended by the Commission for a period of five days; that within five days after such posting O. K. Trucking Co., 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 O. K. Trucking Co., shall examine its records for the period from August 1, 1958 to January 1, 1961, 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, O. K. Trucking Co., shall complete the examination of its records hereinabove required by paragraph 3 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. That O. K. Trucking Co., is hereby directed to take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth in the preceding opinion, together with any additional undercharges found after the examination required

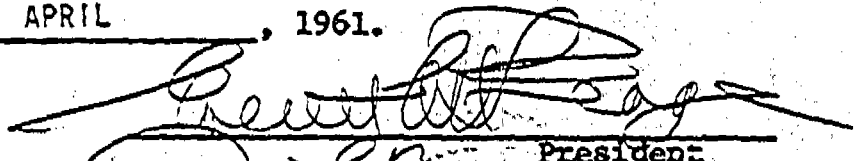
by paragraph 3 of this order, and to notify the Commission in writing upon the consummation of such collections.

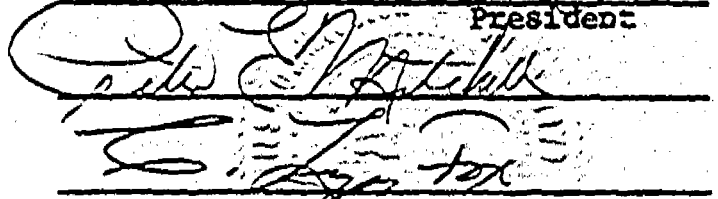
6. That, in the event charges to be collected as provided in paragraph 5 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, O.K. Trucking Co., shall institute legal proceedings to effect collection and shall submit to the Commission, 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.

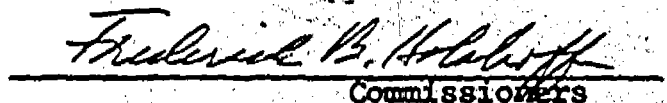
7. That the investigation in so far as it relates to John J. Leonardini, deceased, is hereby discontinued.

The Secretary of the Commission is directed to cause personal service of this order to be made upon O. K. 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  
25<sup>th</sup> day of APRIL, 1961.

  
President

  
Commissioners

  
Commissioners