

Decision No. 61931**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and
practices of FORTIER TRANSPORTATION
COMPANY, a California corporation.

Case No. 6626

Edward M. Berol, for respondent.
Elinore Charles, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations and practices of Fortier Transportation Company to determine whether the respondent has violated various safety rules and regulations contained in General Order No. 99, promulgated by this Commission in Decision No. 46089 (as amended) in Case No. 5097.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis at San Francisco on January 25, 1961.

Evidence was presented at the hearing by the Commission staff and the respondent. Based upon the evidence of record in this matter the Commission makes the following findings and conclusions:

1. At all times herein mentioned respondent held certificates of public convenience and necessity authorizing it to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code and as a petroleum irregular route carrier as defined by Sections 214 and 3514 of the Public Utilities Code.

2. At all times herein mentioned respondent had been served with the Commission's General Order No. 99 and all revisions thereto.

3. At all times herein mentioned Sections 8.01, 8.02, 8.05 and 8.11 of General Order No. 99 provided as follows:

"8.01. 'On Duty.' A driver is on duty from the time he begins to work or is required to be in readiness to work until the time he is relieved from work and all responsibility for performing work. The time spent by a driver resting or sleeping in a berth as defined in Section 8.06 shall not be included in computing time on duty.

"8.02. 'Drive or Operate.' The term 'drive or operate' includes all time spent on a moving vehicle, and any interval not in excess of 15 minutes in which a driver is on duty but not on a moving vehicle. The term 'drive or operate' does not include time spent resting in a sleeper berth as defined in Section 8.06, or in the individual rest facilities provided by any other public passenger conveyance affording equivalent accommodations.

"8.05. '24 Consecutive Hours.' The term '24 consecutive hours' means any such period starting at the time the driver reports for duty, as defined in Section 8.01.

"8.11. 'Hours of Service.' No carrier shall permit or require a driver employed or used by it to drive or operate, as defined in Section 8.02, for more than 12 hours in the aggregate in any 15-hour period on duty. Thereafter, such driver shall have at least eight consecutive hours off duty immediately following the 12 hours' aggregate driving. Regardless of aggregate driving time, carriers shall not permit or require a driver to be on duty, as defined in Section 8.01, for more than 15 hours in any 24-hour period, as defined in Section 8.05, unless eight consecutive hours off duty have elapsed. No carrier, if himself an owner-driver, shall drive or remain on duty for more than the limits prescribed in this section. Two periods of resting or sleeping in a berth as defined in Section 8.06 may be cumulated to give the aforesaid total of eight hours off duty. Nothing herein shall be construed as exempting a carrier or driver from complying with the conditions as adopted by Part 9 of this order."

4. During the year 1960, respondent violated Section 8.11 of General Order No. 99 by permitting or requiring drivers employed by it to be on duty for consecutive hours as follows:

<u>Name of Driver</u>	<u>Date</u>	<u>Consecutive Hours on Duty</u>
Jim Bassham	4-3, 4-60	24:30
Jim Bassham	4-7, 8-60	27:45
Jim Bassham	4-14, 15-60	36:30
Jim Bassham	4-24, 25-60	21:00
Morris Richardson	4-8, 9-60	26:15
Morris Richardson	4-10, 11-60	23:45
Morris Richardson	4-12, 13-60	23:30
Morris Richardson	4-18, 19-60	19:30
Morris Richardson	4-29, 30-60	28:15
LeMoyne Patterson	4-8, 9-60	21:36
LeMoyne Patterson	4-10, 11-60	19:42
LeMoyne Patterson	4-21, 22-60	20:30
LeMoyne Patterson	4-28, 29-60	20:30
Ralph Price	4-2, 3-60	19:42
Ralph Price	4-12, 13-60	27:06
Ralph Price	4-27, 28-60	20:06
Emerson W. York	3-4, 5-60	22:42
Emerson W. York	3-14, 15-60	18:54
Emerson W. York	3-15, 16-60	21:17
Emerson W. York	3-27, 28-60	22:00
L. Bonds	3-2, 3-60	23:48
L. Bonds	3-23, 24-60	23:24
L. Bonds	3-25-60	22:12
L. Bonds	3-28, 29-60	21:54
L. Bonds	3-30, 31-60	17:36
Ross Perry	4-8, 9-60	22:06
Ross Perry	4-18, 19-60	21:48
Ross Perry	4-21, 22-60	21:36

5. All of the violations enumerated in Paragraph 4 hereof involved the transportation of petroleum or petroleum products.

The respondent has conceded the violations set forth above. At the hearing it produced evidence which attempted to show extenuating and mitigating circumstances. Respondent asserts that it did not attempt to conceal the violations; that it cooperated fully with the Commission staff during the investigation; that many of the violations occurred because drivers did not want eight-hour layovers away from home but wanted to return home as soon as possible; that other violations occurred because of the practice of assigning two men to a

tractor where one would be out driving while the other would be at home, and, in such circumstances the men tried to arrange their work to provide for 24 hours of work and 24 hours off; that its dispatchers were unduly influenced by the personal desires of the drivers; that it took drastic action on or about June 9, 1960, to ameliorate the situation; that it was embarked on an extensive general safety program in which General Order No. 99 was called to the attention of its employees; that the imposition of any penalty under the circumstances would work a hardship on the respondent and its employees; and that there was no need for any penalty because respondent was now complying with General Order No. 99.

The Commission staff acknowledges that there has been a general amelioration of respondent's conduct since June 9, 1960. However, the staff attributes this conduct to the fact that a Commission representative on May 27, 1960, began examining pertinent records of the respondent and it was apparent that Commission action was imminent. In addition, the staff introduced in evidence a memorandum by respondent's director of safety and personnel dated August 12, 1959, which was as follows:

"Art Winston, Safety Engineer for the Public Utilities Commission, was in my office today and informed me that due to the barge strike in the Bay Area, all large companies having tank equipment are running night and day in the movement of gasoline and other petroleum products; that due to this increased volume of business, several firms were disregarding the safety regulations as established in General Order No. 99 of the Commission. In the last ten days, tank truck operators have been involved in four major accidents, which resulted in one fatality, four serious injuries and extensive property damage.

"He is, therefore, officially notifying our Company that in the transportation of these products if we have a serious accident and have not been observing the safety regulations, i.e., hours driving, hours on duty, etc., that the Commission will take formal action."

In addition, there was received in evidence a letter from the Commission sent to various carriers including respondent on August 28, 1959, which reads as follows:

"The stoppage of transportation of petroleum products on the inland and coastal waters of California due to a labor dispute has resulted in a substantial increase of petroleum products being transported by for-hire motor carriers. It has come to the staff's attention through normal inspection of such carriers that violations of the basic safety requirements of General Order No. 99 have occurred. Mainly these were hours of service requirements and preventive maintenance requirements.

"During the last fifteen days or so there have been a number of major tank truck accidents involving for-hire petroleum carriers. These accidents resulted in fatalities, serious injuries, and considerable property damage.

"This letter is to advise all Petroleum Irregular Route Carriers and Petroleum Contract Carriers that the unusual conditions now prevailing do not authorize disregard of the safety rules and regulations of General Order No. 99. Neither is compliance with Section 8.15 of General Order No. 99, which requires a monthly report of excess hours from carriers, to be construed as justification for failure to observe the maximum allowable hours as outlined in Section 8.11.

"Safety of operation with respect to heavy duty commercial motor vehicles on public highways is of such gravity as to demand your fullest attention. You are urged to make immediate inspection of your equipment in petroleum products service and to correct deficiencies found as well as to review the operations generally in the light of the requirements. All deviations from General Order No. 99 will be fully investigated and recommendations made to the Commission for such formal action as is warranted by the facts developed."

The Commission is not persuaded that many of the violations occurred for the reasons proffered by respondent. For example: driver Richardson was permitted to be on duty for 26:15 consecutive hours on April 8-9, 1960, for 23:45 consecutive hours on April 10-11, 1960, and for 23:30 consecutive hours on April 12-13, 1960; driver Patterson was permitted to be on duty for 21:36 consecutive hours on April 8-9, 1960, and for 19:42 consecutive hours on April 10-11, 1960; driver York was permitted to be on duty for 18:54 consecutive

hours on March 14-15, 1960, and for 21:17 consecutive hours on March 15-16, 1960; and driver Bonds was permitted to be on duty for 23:24 consecutive hours on March 23-24, 1960, for 22:12 consecutive hours on March 25, 1960, for 21:54 consecutive hours on March 28-29, 1960, and for 17:36 consecutive hours on March 30-31, 1960. In all of these instances the driver was operating a large vehicle containing a dangerous and flammable commodity in disregard of the safety regulations promulgated by this Commission in General Order No. 99.

While respondent's present posture of compliance with General Order No. 99 is to be commended, the Commission is of the opinion that this compliance resulted only from the present investigation. A carrier should not be permitted to violate safety regulations and then escape penalties by complying with these regulations once it is apprehended.

The Commission further finds and concludes that respondent's operating authority as a petroleum irregular route carrier and so much of its highway common carrier operating authority which authorizes it to transport petroleum and petroleum products, including but not limited to the authority contained in Appendix "C" attached to Decision No. 60456 in Application No. 41201 should be suspended for a period of fifteen days with the execution of ten of said days suspended for a period of one year. If at the end of the period of one year the Commission is satisfied that respondent is complying with the order, rules and regulations of this Commission, the deferred portion of said suspension will be vacated without further order of this 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 additional ten-day period of suspension will be imposed with whatever additional penalty the Commission deems necessary.

O R D E R

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

IT IS ORDERED that:

1. The certificate of public convenience and necessity contained in Decision No. 60456 in Application No. 41201 authorizing Fortier Transportation Company to operate as a petroleum irregular route carrier and so much of the certificate of public convenience and necessity contained in Decision No. 60456 in Application No. 41201 which authorizes Fortier Transportation Company to transport petroleum products as a highway common carrier, including but not limited to the authority contained in Appendix "C" of said decision are hereby suspended for a period of fifteen consecutive days; provided, however, that the execution of ten days of said suspension is hereby deferred pending further order of this Commission. If no further order of this Commission is issued affecting said suspension within one year from the date of issuance of this decision, the unexecuted portion of the suspension shall be automatically vacated. The executed period of suspension will commence at 12:01 a.m. on the second Monday following the effective date of this order; and respondent shall not lease the equipment or other facilities used in operations under these certificates for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. Respondent 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 certificate of public convenience and necessity contained in Decision No. 60456 in Application No. 41201 authorizing Fortier Transportation to operate as a petroleum irregular route carrier and so much of the certificate

of public convenience and necessity contained in Decision No. 60456 in Application No. 41201 which authorizes Fortier Transportation Company to transport petroleum products as a highway common carrier, including but not limited to the authority contained in Appendix "C" of said decision are hereby suspended for a period of five consecutive days. Within five days after the posting of such notice, respondent shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Fortier Transportation Company, a corporation, and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 1st day of May, 1961.

Levitt B. Pease
 President

George L. Crover
 Commissioner

Frederick B. Blahoff
 Commissioners