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ORIGINAL

Decision No. 62799

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of PRICKETT TRANSPORTATION CO., INC.	)	Case No. 6520

James F. Mastoris, for respondent.
Hugh N. Orr, for the Commission staff.

O P I N I O N

By its order dated June 6, 1960, the Commission instituted an investigation into the operations and practices of Prickett Transportation Co., Inc.

Public hearing was held before Examiner Thomas E. Daly at San Francisco on April 12 and June 6, 1961 with the matter being submitted upon concurrent briefs since filed and considered.

The investigation primarily relates to the nature of 14 shipments transported for Nestle Company. Also involved is the rating of one shipment transported for Foremost Sales Corp., Inc. Evidence taken from the Commission records kept in the usual course of business was introduced to show that respondent had been served with copies of appropriate minimum rate tariffs.

Concerning the 14 shipments transported for Nestle Company, the question is whether they moved in foreign (or interstate) commerce or in intrastate commerce. If the shipments were intrastate in nature, then respondent should have applied its local tariff rates rather than the assessed interstate rates which result in undercharges in the amount of $784.05.

The shipments involve the movement of green coffee beans by respondent from either the San Francisco water front or the

Walkup Warehouse in San Francisco to the Nestle Company's plant located at Ripon, California. The shipments were made during the months of June through October, 1959.

The record indicates that although it has provided the Nestle Company with such service since 1948, respondent has been in a quandary as to whether the Interstate Commerce Commission or the California Public Utilities Commission had jurisdiction over such movements. In 1948 respondent was granted temporary authority from the Interstate Commerce Commission to conduct the operations between San Francisco and Ripon. In 1951 the Interstate Commerce Commission held that coffee beans were exempt as an agricultural product over which that Commission had no jurisdiction. In 1954 the California Commission notified respondent that inasmuch as coffee beans were exempted under the Interstate Commerce Act, they automatically came within the jurisdiction of this Commission. When the Transportation Act of 1958 became effective green coffee beans were no longer exempt. Consequently, respondent filed for grandfather rights with the Interstate Commerce Commission. On April 11, 1960, said Commission denied the application on the ground that the coffee was purchased from a broker subsequent to arrival on piers or in warehouses in San Francisco. Respondent filed exceptions to the decision on May 17, 1960, and on June 6, 1960, this Commission instituted the instant investigation. Since that time the Interstate Commerce Commission ordered a formal hearing, which was held on July 11, 1960, and as a result thereof found that respondent "was in bona fide operation as a contract carrier by motor vehicle, in interstate or foreign commerce, over irregular routes, of coffee beans from San Francisco, California to Ripon, California under contract or contracts with Nestle Company." As a result respondent was granted a grandfather permit as a contract carrier.

The evidence introduced in the instant proceeding shows that the Nestle Company owns and operates a plant at Ripon, California, where green coffee beans are processed and manufactured into instant coffee. The coffee beans are purchased by Nestle in one of several ways:

1. Purchase directly from the grower at the foreign point of origin.
2. Purchase from a New York broker prior to the loading of the coffee on board ship.
3. Purchase from a New York broker while the coffee is enroute to San Francisco.

Since the shipments here involved were not purchased directly from the grower we will consider only the procedure followed when purchasing from a broker.

The broker purchases large lots of coffee from growers at plantations located in certain South American and Central American countries as well as Mexico and Africa. At the plantation beans are graded and placed in bags, which are stencilled with port or chop marks. Purchase contracts are executed by the Nestle Company with the brokers for a portion of the total coffee shipment either before the coffee leaves the port of origin or before arrival at the Port of San Francisco. The purchase contracts and invoices call for a specified number of bags bearing a certain port or chop mark to be delivered at the docks in San Francisco, subject to a sampling test of each lot. Samples are mailed to New York for the purpose of determining whether an adjustment in the blending formulae will be required and not to determine whether the coffee will be accepted or rejected.

Upon arrival in San Francisco the coffee is transferred from the ship to the dock where respondent transports the beans previously purchased by Nestle to the Nestle plant at Ripon or to

the Walkup Company's San Francisco warehouse if storage space is not available at Ripon. When placed in storage the coffee beans are held until such time as space is available. Of the 14 shipments considered, three shipments, one of which consisted of four parts, were held in storage for periods ranging from 11 days to 58 days.

The foreign or interstate as opposed to intrastate character of commerce is a question of fact (Southern Pacific Co. v. Arizona (1918) 249 U.S. 472, 63 L. Ed. 713) and must be determined by the essential character of the commerce (Atlantic Coast L.R.Co. v. Standard Oil Co. (1927) 275 U.S. 257, 72 L. Ed. 270).

The essential character of the commerce is largely determined by the intention of the shipper and is not dependent upon the question when or to whom the title passes, the fact that the transportation is completed under a local bill of lading which is wholly intrastate or by the fact that there may be a detention before the shipment on the local bill of lading (United States v. Erie R. Co. (1929) 280 U.S. 98, 74 L. Ed. 187; Manlowe Transfer & D. Co. v. Department of P. Service (1943) 18 Wash. 2d 754, 140 P. 2d 287).

The Nestle Company has but one coffee processing plant in California and the evidence indicates that its continuing intention is that all the coffee beans which it has purchased for delivery in San Francisco be transported to that plant at Ripon.

In the case of direct purchases by the Nestle Company from the growers, where Ripon is the intended point of destination and transportation is in a continuous movement, there can be no doubt that the entire movement would be considered foreign commerce. The same conclusion should apply where the purchases are made from a broker instead of the grower prior to export from the foreign country, or in some instances while enroute to this country, where the intention of Nestle remains the same; i.e., that the beans are ultimately destined

for Ripon. Differences in title or temporary detention for storage in San Francisco are not controlling and do not affect the essential character of the commerce. The Commission therefore finds and concludes that the shipments in question moved in foreign commerce and as such were not subject to the jurisdiction of this Commission.

The single split delivery shipment for the Foremost Sales Corporation concerns a matter of interpretation of Minimum Rate Tariff No. 2. The shipment originated at Newman with split deliveries at Richmond and Burlingame. In substance the only difference between the staff's rating and that rated by the Assistant Transportation Manager for Foremost Sales Corporation lies in the determination of the correct mileage to be applied.

Respondent, through the Foremost Company's Assistant Transportation Manager, computed the constructive mileage as 128 miles, by computing the constructive miles from Newman to an assumed San Francisco-Oakland Pickup and Delivery Zone and tacking on the mileage from the northern point in this territory (Albany) to Richmond and the mileage from the southern point in the territory (South San Francisco) to Burlingame. The staff disagrees with this interpretation and contends that the constructive mileage is 163.5 miles and should have been computed by taking the constructive mileage from Newman to Richmond and then from Richmond to Burlingame.

Although respondent relies upon Items 170 (a) and (c) of Minimum Rate Tariff No. 2 as authority for such construction, Item (a) clearly states that "distance rates shall be determined by the distance from the point of origin to that point of destination which produces the shortest distance via the other point or other points of destination." (Emphasis added) Nor does Minimum Rate Tariff No. 2 provide a combined San Francisco-Oakland Pickup and Delivery Zone with Oakland as a base point.

After consideration the Commission finds and concludes that respondent's interpretation of Minimum Rate Tariff No. 2 insofar as the constructive mileage was computed on the split delivery shipment between Newman, on the one hand, and Richmond and Burlingame, on the other hand, is not reasonable and that the constructive mileage as computed by the staff is correct. The rate and charge as assessed was, therefore, below the minimum and result in an undercharge of $31.42.

Because of the insubstantial nature of the single shipment for the Foremost Company no suspension will be ordered, and the investigation will be discontinued.

O R D E R

An investigation having been instituted, a public hearing having been held and the Commission being informed in the premises,

IT IS ORDERED that Case No. 6520 is hereby discontinued.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 14th day of NOVEMBER, 1961.

[illegible signature] President

[illegible signature]

George G. Grover

Commissioners

I dissent. It is my opinion that the charges involved [illegible] intra state [illegible]

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I [illegible].

I concur with President McKeage
Frederick B. Holoboff