

Decision No. 62957

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 A. L. ASLAN
doing business as ASLAN TRUCK SERVICE.)

Case No. 7137

A. L. Aslan, in propria persona.

Richard V. Godino, for the Commission staff.

O P I N I O N

On June 20, 1961, the Commission instituted an investigation into the rates and practices of A. L. Aslan, doing business as Aslan Truck Service.

A public hearing was held before Examiner Thomas E. Daly on October 31, 1961, at San Francisco, and the matter was submitted.

Respondent is presently engaged in the transportation of property under authority of Radial Highway Common Carrier Permit No. 10-5773 and Highway Contract Carrier Permit No. 10-8387. His principal place of business is 1045 Simpson Street, Kingsburg, California. It was stipulated that he had been served with copies of the appropriate Minimum Rate Tariffs involved herein.

The record indicates that a representative of the Commission's License and Compliance Branch visited respondent's place of business on May 9, 1960. After checking through approximately 400 freight bills the representative caused photostat copies to be made of the underlying documents relating to 18 shipments. These were received in evidence as Exhibit No. 1. Based upon these

documents a staff rate expert prepared and introduced Exhibit No. 2, which indicates the undercharges resulting therefrom.

Parts 1 through 4 of Exhibit No. 2 relate to shipments of melons moving to off rail points. Parts 5 through 9 concern shipments of melons which respondent picked up in El Centro, brought to his yard in Kingsburg and subsequently moved to points such as Fresno, Stockton, and Merced. Respondent deviated from the minimum rates by allowing a 2 percent shrinkage from the total weight on all of the nine shipments. These shipments resulted in undercharges in the amount of \$548.66.

Parts 10 through 15, with the exception of Part 12, which was deleted from the exhibit, involve shipments moving to off rail points and violations of Minimum Rate Tariff No. 2 in the amount of \$101.89.

Parts 16 through 18 constituted a "buy and sell" arrangement with Southwest Commodity Corporation. The shipments were of bulk barley, which respondent allegedly purchased from Southwest Commodity Corporation at Five Points and sold to Southwest Commodity Corporation at Cal-Fed Feed Co. located 12 miles southeast of Brawley. The difference in the purchase and sales prices was 35 cents per hundred pounds. Part 19 was a straight shipment of bulk barley for Southwest Commodity Corporation from Five Points to Cal-Fed Feed Co. for a transportation charge of 35 cents per hundred pounds. These shipments resulted in undercharges in the amount of \$1,463.59.

Respondent testified that he allowed the 2 percent shrinkage because the railroads allow for it and shippers expect it. With respect to the "buy-sell" arrangement he testified that he knew it was wrong but it was necessary to use the device to be competitive with other carriers.

After consideration the Commission finds and concludes that:

1. Respondent has violated Section 3664 of the Public Utilities Code by charging or collecting a lesser compensation for the transportation of property as a highway permit carrier than the applicable charges prescribed by Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 3.

2. Respondent has violated Section 3663 of the Public Utilities Code by permitting Southwest Commodity Corporation, through the device of a "buy and sell" arrangement, to obtain transportation of property between points within this State at rates less than the minimum rates prescribed by Minimum Rate Tariff No. 2.

O R D E R

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

IT IS ORDERED:

1. That operative rights of A. L. Aslan as evidenced by Radial Highway Common Carrier Permit No. 10-5773 and Highway Contract Carrier Permit No. 10-8387 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 he 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 A. L. Aslan shall post at his 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 his Radial Highway Common Carrier permit and Highway Contract Carrier permit have been suspended by the Commission for a period of five days; that within five days after such posting A. L. Aslan 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 A. L. Aslan shall examine his records for the period from June 1, 1959 to the present time 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, A. L. Aslan shall complete the examination of his records hereinabove required by paragraph 3 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. That A. L. Aslan 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, A. L. Aslan 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon A. L. Aslan, and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 19th day of DECEMBER, 1961

Edward R. Roy
 President

John J. Marshall

E. J. Fox

George G. Grover

Frederic B. Holcomb
 Commissioners