

ORIGINAL

Decision No. 63103

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of Soule
Transportation, Inc., a corporation.

Case No. 7105

Thelen, Marrin, Johnson & Bridges by
Max Thelen, Jr., for respondent
Elmer Sjostrom, for the Commission staff.

O P I N I O N

On April 25, 1961, the Commission issued its order instituting investigation into the operations, rates and practices of Soule Transportation, Inc. More specifically, the investigation was directed toward determining whether respondent, as a highway permit carrier, violated Section 3668 of the Public Utilities Code by assisting, suffering or permitting a shipper to obtain transportation of property between points within this State at rates less than the minimum established or approved by the Commission.

Pursuant to the aforesaid order, a public hearing was held at San Francisco before Examiner Martin J. Porter on August 3, 1961. The matter having been submitted and briefs having been filed, the matter is now ready for decision.

From the evidence it appears that respondent was incorporated under the laws of the State of California on May 1, 1959. It is a wholly owned subsidiary of Soule Steel Company, also a California corporation. On July 16, 1959, respondent was issued a Highway Contract Carrier Permit (No. 38-7549) by this Commission.

It further appears that the principal officers of respondent are also the principal officers of Soule Steel Company. The

president of respondent is also vice president in charge of marketing of the steel company. The vice president and treasurer of Soule Steel Company is also secretary-treasurer of respondent. In this capacity, he is in charge of respondent's operations but neither he, nor his secretary who assists him in this regard, receives any compensation from respondent.

All operations of respondent are conducted from offices belonging to Soule Steel Company, for which respondent pays no rent. In addition to the three principal officers of respondent, two employees of Soule Steel Company are authorized to sign checks in behalf of respondent.

Respondent has no equipment of its own. It leases two tractors from an independent leasing corporation, and six semi-trailers from Soule Steel Company for which it pays a rental at the rate of two cents per mile. Respondent employs three drivers, who are on the payroll of respondent.

With minor exceptions, respondent's transportation activities are all in behalf of the steel company. A substantial portion of this transportation is done through subhaulers. For the 12 months ended September 30, 1961, the percentage of dollar volume of freight handled by respondent itself was 56.88 percent. The remaining dollar volume of freight was handled by other licensed carriers through subhaul arrangements.

The supervisor-dispatcher of the steel company dispatches the equipment of respondent and is responsible for making arrangements with the carriers who are engaged as subhaulers. This employee, like the others referred to, receives no part of his compensation from respondent. In those instances where subhaulers are employed to handle property of Soule Steel Company, respondent

charges and receives from the steel company the applicable minimum rate. In turn, it pays the subhaulers something less than the minimum rate.

Respondent through its president presented evidence to the effect that it was always the intention to manage the activities of respondent in compliance with the laws and rules and regulations of the Commission; that respondent had its own separate books and records, that it filed an independent income tax return, and that it otherwise operated as a separate and distinct corporation. He stated that while it was his understanding that respondent was to be charged for joint use of facilities, it was true that no such charges had been made. He further testified that respondent did not remit to the steel company any part of the difference between the lawful minimum rates collected from it and the lesser amount paid to the subhaulers. He also testified that as president he was not remunerated directly by respondent.

The staff contends that for the purpose of determining whether transportation was obtained at less than minimum rates, the relationship between the respondent and the steel company is such that they are one and the same and therefore respondent's corporate identity must be disregarded; that for all the foregoing reasons the subhaulers employed by respondent to haul property for the steel company were in fact prime carriers who received less than minimum rates for such transportation in contravention of the law.

Respondent, on the other hand, argues that the alter ego doctrine cannot be applied in this case because no violation of law has been established, since the evidence shows that the steel company at all times paid to respondent the lawful minimum rates for its transportation services. Furthermore, it is argued that the

arrangement WAS not otherwise shown to be a device created to obtain transportation of property at less than minimum rates. ✓

In dealing with the specific facts in this case, while it is true that the evidence fails to show actual rebates it is obvious that the only and ultimate beneficiary of the reduced rate transportation services which were rendered is the steel company as the shipper. The fact that the steel company at all times paid the lawful minimum rates to its subsidiary, the transportation company, is of no consequence because as the sole stockholder thereof it stands in a position ultimately to get the benefit of the reduced rate transportation. Nor is it necessary to find that moneys were actually remitted to the steel company, either in the form of payments representing the difference between amounts paid to its subsidiary and what the subsidiary paid to the subhaulers, or in the form of dividends, distribution of capital on dissolution, or otherwise. It seems clear that to the extent that the subsidiary paid less than the minimum rates, it thereby reduced its expenses and increased its income, which increased income ultimately inures to the benefit of its sole stockholder, the steel company and shipper in this case. By reason of the foregoing, the steel company benefits, notwithstanding that respondent's profit or surplus remains undistributed. ✓

Based upon a consideration of the evidence and arguments herein, the Commission is persuaded that there exists such a unity of ownership, interest and control between the steel company as shipper and respondent as a permitted highway carrier as to make such an intercorporate arrangement a device by means of which the Public Utilities Code was violated. ✓

Findings and Conclusions

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

1. Respondent is the holder of Highway Contract Carrier Permit No. 38-7549.

2. Respondent is a corporation organized and existing pursuant to the laws of the State of California, and is a wholly owned subsidiary of Soule Steel Company, also a California corporation.

3. Respondent engaged other permitted highway carriers as subhaulers to transport property of Soule Steel Company within this State, to whom respondent paid less than the minimum rates prescribed by Minimum Rate Tariff No. 2.

4. For the purpose of enforcing the minimum rates prescribed in Minimum Rate Tariff No. 2, there is such a unity of ownership, management and control between Soule Steel Company and Soule Transportation, Inc., as to warrant disregard of Soule Transportation, Inc., as a separate corporate entity. The subhaulers employed to transport property of Soule Steel Company were in fact prime carriers who received less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2.

5. By reason of the foregoing, Soule Steel Company has obtained, in violation of Section 3668 of the Public Utilities

Code, transportation between points within this State at rates less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2. }

O R D E R

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

IT IS ORDERED:

1. That Soule Transportation, Inc., cease and desist from permitting Soule Steel Company to obtain transportation of property between points within this State at rates less than the minimum rates established by the Commission.
2. That Highway Contract Carrier Permit No. 38-7549 issued to Soule Transportation, Inc., is hereby revoked; provided, however, that said revocation is hereby deferred pending further order of this Commission. If no further order of this Commission is issued affecting said revocation within one year from the date of issuance of this decision, the revocation shall be automatically vacated.
3. That Soule Transportation, Inc., shall review its records of all transportation performed for Soule Steel Company wherein purported subhaulers were used to perform the actual transportation between July 16, 1959, and the effective date of this order. Soule Transportation, Inc., shall then pay to such furnishers of transportation the difference between the lawful minimum rate and charge applicable to such transportation and the amount previously paid to such furnishers of transportation ostensibly as subhaulers.

4. That, within ninety days after the effective date of this decision, Soule Transportation, Inc., shall file with the Commission a report setting forth the lawful minimum rate for transportation and the amount paid the purported subhaulers after the examination required by paragraph 3.

5. That whenever respondent engages other carriers for the transportation of property of Soule Steel Company or of customers or suppliers of Soule Steel Company, permittee shall not pay such carriers less than the minimum rates and charges established by the Commission for such transportation.

6. That the Secretary of the Commission is directed to cause personal service of this order to be made on Soule Transportation, Inc., and this order shall become effective twenty days after the date of such service.

Dated at San Francisco, California, this 9th
day of January, 1962.

[Signature]
President
[Signature]
[Signature]
George H. Crover
Fredrick B. Hahloff
Commissioners