

Decision No. 63227**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
practices, rates, charges and)
contracts of J. & V. TRUCKING)
COMPANY, a corporation.)

Case No. 6567

Phil Jacobsen, for respondent.
Hector Anninos, for the Commission staff.

O P I N I O N

Order instituting investigation, dated June 28, 1960, was directed toward the question of whether J. & V. Trucking Company is a device whereby transportation of property between points in this State is performed for shipper at rates less than those prescribed by the Commission in Minimum Rate Tariff No. 2, in violation of Section 3668 of the Public Utilities Code.

A public hearing was held on October 4 and 5, 1960, at Los Angeles, before Examiner Martin J. Porter, and the matter was submitted on the latter date. On February 21, 1961, the Commission set aside the submission and reopened the matter for further hearing. On June 28, 1961, said hearing was held and the matter submitted subject to filing of briefs. The staff has filed a brief, the respondent chose not to file a brief and the matter is now ready for decision.

The essential facts proved were:

1. Young's Market Company is a corporation with 13 principal stockholders.
2. Mr. Vernon O. Underwood is a minority stockholder and an officer and director of Young's Market Company.

3. Mr. Vernon O. Underwood formed the J. & V. Trucking Company and is an officer, director and minority stockholder of said company.
4. J. & V. Trucking Company transports for and to Young's Market Company liquor from the Menlo Park area in California and from the area of Young's Market Company hauls to the Menlo Park area empty bottles for bottle shippers.
5. Young's Market Company and the bottle shippers pay the lawful minimum rate for the transportation to J. & V. Trucking Company.
6. J. & V. Trucking Company used subhaulers on many of the shipments and paid said subhaulers 10 to 15 percent less than the minimum rate established by the Commission.
7. Profits of J. & V. Trucking Company accrue to the shareholders of J. & V. Trucking Company.
8. Subhaulers are no longer engaged for actual transportation for the account of Young's Market Company.

From the evidence, it appears that Underwood, as a principal officer and a stockholder of both Young's Market and J. & V. Trucking, stands in a position of substantially controlling the operations of each. It also appears that Underwood as an individual derives a financial benefit from the trucking operations under consideration. While the evidence does not show that J. & V. Trucking actually rebated any part of the minimum rates paid to it by Young's Market, it could well be argued, as the staff does, that the arrangement was intended to be, or is, a substitute for additional compensation which Young's Market, in the absence of such arrangement, would have to pay to Underwood as a stockholder, officer and employee. If such were the case, there would undoubtedly

be a benefit accruing to Young's Market as a shipper and it could be concluded that, in each instance where property of Young's Market was carried by subhaulers at reduced rates, Section 3668 of the Public Utilities Code was violated. The evidence, however, does not clearly and convincingly show that the arrangement in fact resulted in Young's Market receiving any such benefit. Notwithstanding that the record is silent in this regard, the arrangement does appear, to say the least, suspect as a device intended to obtain transportation at less than such minimum rates.

From the standpoint of enforcing minimum rates it is not necessary, in our judgment, that it be shown that a particular transaction has resulted in that which the statute condemns but only that the transaction be reasonably susceptible of resulting in the evil sought to be avoided. Accordingly, in issuing operating permits, where it appears that there is an affiliation between carrier and shipper by reason of common ownership, management or control, it has been the Commission's policy to specify in such permits that not less than the applicable minimum rates shall be paid by such carrier to subhaulers engaged to carry the property of the affiliated shipper. In the circumstances, it is found and concluded that regulatory objectives will be achieved by imposing a similar requirement herein.

O R D E R

Public hearing having been held herein, and based upon the evidence adduced and the foregoing findings,

IT IS ORDERED:

1. That, on the effective date of this decision, the Secretary of the Commission is directed to cause Highway Contract Carrier Permit No. 19-52789, as amended, issued to J. & V. Trucking Company, to be further amended by inserting therein a requirement that whenever permittee engages other carriers for the transportation of property of Young's Market Company, or of customers or suppliers of Young's Market Company, permittee shall pay such other carriers not less than the minimum rates and charges established by the Commission for the transportation actually performed by such other carriers.

2. That Case No. 6567 be and it is hereby discontinued.

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

Dated at San Francisco, California, this 6th
day of FEBRUARY, 1962.

Carroll H. Ray
President
Robert E. W. [unclear]
E. Lynn Fox
Frederick B. Haloboff

Commissioners