

Decision No. 63228

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 Coast
Trucking, Inc., a corporation;
William K. Hart; Lonnie Waggoner;
Richard Pratt, doing business as
Pratt's Livestock and General
Transportation; and Landis Morgan.

Case No. 7049

Russell & Schureman, by Theodore A. Russell,
for respondent, Coast Trucking, Inc.
Richard Pratt, doing business as Pratt's
Livestock and General Transportation; and
Landis Morgan, respondents.
Gerald A. Laster and Arthur J. Lyon, for the
Commission staff.

O P I N I O N

On January 24, 1961, the Commission issued its order instituting investigation into the operations, rates and practices of Coast Trucking, Inc.; William K. Hart; Lonnie Waggoner; Landis Morgan; and Richard Pratt, doing business as Pratt's Livestock and General Transportation, for the purpose of determining:

1. Whether respondent Coast Trucking, Inc., is a device whereby the transportation of property between points in this State is performed for a shipper at rates less than those prescribed by Minimum Rate Tariff No. 2 in violation of Section 3668 of the Public Utilities Code.

2. Whether respondents William K. Hart, Lonnie Waggoner, Richard Pratt, and Landis Morgan have charged, demanded, collected or received for the transportation of property, rates or charges less than the minimum rates and charges applicable to such

transportation which have been established by the Commission, in violation of Section 3667 of the Public Utilities Code.

Pursuant to the order of investigation a public hearing was held at Los Angeles June 22, 1961, and September 19, 1961, on which latter date the matter was submitted.

The evidence in this case is that all respondents are highway permit carriers; Coast Trucking, Inc., has outstanding thirty shares of stock and Robert P. Baugh, William E. Baugh and Leo F. Maxon, Jr., each own ten shares. The same three individuals are the directors of Coast Trucking, Inc.

The stock of Baugh Lumber Sales Co., Inc., from January 21, 1959, to March 17, 1960, was owned equally by Robert P. Baugh, William E. Baugh, brothers, and F. P. Baugh, their father. On March 18, 1960, the one-third interest of F. P. Baugh was divided equally between Robert P. Baugh and William E. Baugh.

The staff reviewed the shipping records of Coast Trucking, Inc., for the months of December 1959, January and February 1960, which consisted of 90 shipments. All 90 shipments were hauled for the account of Baugh Lumber Sales Co., Inc., and subhaulers were engaged to do the actual hauling of the property. Coast Trucking, Inc., leases one tractor and trailer which is not used by it for any transportation of property.

Fourteen of the 90 shipments were rated by the staff and revealed undercharges in seven instances. These violations were not the main point of the staff evidence; rather, its evidence was primarily concerned with the fact that Baugh Lumber Sales Co., Inc., pays to Coast Trucking, Inc., the minimum rate (except for those where undercharges were found); Coast Trucking, Inc., pays the subhaulers an amount less than the minimum rate.

Mr. Landis Morgan and Mr. Richard Pratt testified that they considered themselves subhaulers as to property hauled for Coast Trucking, Inc.

Coast Trucking, Inc.'s position is that the ownership of Baugh Lumber Sales Co., Inc., being different from that of Coast Trucking, Inc., there is not such a unity of interest and ownership in the two corporations as would warrant disregarding their separate entities. ✓

Findings and Conclusions

Whether a carrier is a device whereby a shipper is permitted to obtain transportation of property at rates less than the minimum rates established by this Commission is a question of fact that must be decided not alone on the ownership interest of the carrier and shipper but also on the course of conduct of the carrier. Here we have a carrier, during a three-month period, that actually transported none of the property of the shipper yet purported to collect the minimum rates and paid those who actually transported the property less than the minimum rates. While there is not equal, or exactly the same, ownership interest in the shipper corporation and the carrier, we find that there is a majority ownership in each corporation by the Baugh brothers, and that they control both corporations. We also find that Coast Trucking, Inc., is a device whereby a shipper (Baugh Lumber Sales Co., Inc.) has received transportation of property at rates less than those prescribed by this Commission in violation of Section 3668 of the Public Utilities Code, and that William K. Hart, Lonnie Waggoner, Richard Pratt, doing business as Pratt's Livestock and General Transportation, and Landis Morgan are in fact prime carriers for the transportation in question.

O R D E R

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

IT IS ORDERED:

1. That Coast Trucking, Inc., cease and desist from permitting Baugh Lumber Sales, Co., Inc., to obtain transportation of property between points within this State at rates less than the minimum rates established by the Commission.

2. That Coast Trucking, Inc., shall review its records of all transportation purchased by Baugh Lumber Sales Co., Inc., between December 1, 1959 and the effective date of this order in which Coast Trucking, Inc., was ostensibly prime carrier and the furnishers of such transportation were ostensibly subhaulers. Coast Trucking, Inc., shall then pay to such furnishers of transportation the difference between the lawful minimum rates and charges applicable to such transportation and the amount previously paid to such furnishers of transportation ostensibly as subhaulers.

3. That William K. Hart, Lonnie Waggoner, Richard Pratt, doing business as Pratt's Livestock and General Transportation, and Landis Morgan shall review their records of all transportation they performed ostensibly as subhaulers for Coast Trucking, Inc., from December 1, 1959 to the effective date of this order for the purpose of ascertaining the lawful minimum rates for said transportation based on the fact that they were prime carriers of said transportation.

4. That within ninety days after the effective date of this decision, Coast Trucking, Inc., William K. Hart, Lonnie Waggoner, Richard Pratt, doing business as Pratt's Livestock and General

Transportation, and Landis Morgan shall file with the Commission a report setting forth the lawful minimum rates for the transportation and the amount paid William K. Hart, Lonnie Waggoner, Richard Pratt, doing business as Pratt's Livestock and General Transportation, and Landis Morgan found after the examination required by paragraphs 2 and 3 hereof.

5. That William K. Hart, Lonnie Waggoner, Richard Pratt, doing business as Pratt's Livestock and General Transportation, and Landis Morgan are hereby directed to take such action, including legal action, as may be necessary to collect the difference between the lawful minimum rate and the amount they received for transportation as disclosed by the examination required by paragraph 3 hereof.

6. That in the event charges to be collected as provided by paragraph 5 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, William K. Hart, Lonnie Waggoner, Richard Pratt, doing business as Pratt's Livestock and General Transportation, and Landis Morgan 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.

7. That on the effective date of this decision the Secretary of this Commission is directed to cause to be amended Radial Highway Common Carrier Permit No. 19-50443 and Highway Contract Carrier Permit No. 19-50444 issued to Coast Trucking, Inc., by prohibiting said Coast Trucking, Inc., whenever it engages other carriers in

connection with the transportation of property for Baugh Lumber Sales Co., Inc.; Baugh Bros. & Co.; Inyo Mill Co. of Calif. and Wholesale Planing Mill, or of their customers and suppliers from paying such other carriers less than applicable minimum rates established by the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Coast Trucking, Inc., William K. Hart, Lonnie Waggoner, Richard Pratt, doing business as Pratt's Livestock and General Transportation, and Landis Morgan, and this order shall become effective twenty days after the date of such service upon the respondents.

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

[Signature]
 President
[Signature]
[Signature]
George G. Grover
Frederick B. Halbach
 Commissioners