

ORIGINALDecision No. 63750

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into the operations,
 safety, practices, equipment, and
 facilities of VALLEY MOTOR LINES,
 INC., a corporation, and IMPERIAL
 TRUCK LINES, INC., a corporation. }

Case No. 7231

Russell and Schureman by R. Y. Schureman,
 for Imperial Truck Lines, Inc.; Knapp,
 Gill, Hibbert & Stevens by Wyman C.
Knapp and Stephan W. Langmade, for
 Valley Motor Lines, Inc., respondents.
Walter G. Linstedt and Arthur I. Winston,
 for the Commission staff.

O P I N I O N

By its order dated November 14, 1961, the Commission instituted an investigation into the operations, safety, practices, equipment and facilities of Valley Motor Lines, Inc., (hereinafter referred to as Valley) and Imperial Truck Lines, Inc., (hereinafter referred to as Imperial).

A public hearing was held before Examiner Thomas E. Daly on February 14, 1962, at Fresno and the matter was submitted upon concurrent briefs since filed and considered.

By Decision No. 59583, dated February 1, 1960, in Application No. 38221, Valley was authorized to provide service as a highway common carrier of general commodities between all points from San Francisco and Redding on the north and San Diego and the Imperial Valley on the south. By Decision No. 60235, dated June 6, 1960, in Application No. 41580, Imperial was authorized to provide service as a highway common carrier for the transportation of general

commodities between the Los Angeles Basin Territory, the Imperial Valley Territory, and the San Diego Basin Territory. In addition thereto, Valley and Imperial are authorized to provide service pursuant to permits duly issued by this Commission.

The record indicates that on or about February 3, 1961, Valley transported a shipment of phosdrin from Fresno to Los Angeles. Phosdrin is an agricultural insecticide classed as Poison B by the Interstate Commerce Commission, which classification has been adopted by this Commission. Upon reaching Valley's Los Angeles dock the shipment of phosdrin was interchanged with Imperial, at which time Imperial's driver noted an exception to the shipment by indicating on the shipping document that one of the cans had been punctured. Imperial then transported the shipment, including the punctured can, to Valley Chemical Company in El Centro. Accompanying the shipment of phosdrin from Fresno to Los Angeles, in Valley's trailer, was a shipment of denim jeans destined to J. C. Penny Company in Westchester, Los Angeles County. Upon inspection the J. C. Penny Company discovered that 16 pairs of the jeans were soiled by phosdrin. The shipment was rejected and the jeans were picked up by Valley and subsequently sold to the public through Valley's salvage store in Fresno.

It was stipulated that if called as a witness, Mr. Ritter, an employee of Valley Chemical Company, the consignee of the phosdrin shipment, would testify that according to his recollection the punctured can of phosdrin bore warning labels describing its dangerous contents. However, the claims inspector for Imperial testified that the can bore no such labels when he made his inspection at the consignee's place of business.

The staff witness, a motor transportation supervisor with the safety section of the transportation division, conducted an

investigation of respondents' safety operations regarding the transportation of dangerous articles for the period October 31, 1961 to December 19, 1961. During the course of his investigation he acquired and introduced in evidence the shipping documents relating to the shipment of phosdrin. His investigation also disclosed that prior to the shipment of phosdrin respondents had not specifically instructed their employees with respect to the transportation of dangerous articles but had subsequently done so.

By Part 9 of General Order No. 99 this Commission adopted, together with all modifications, amendments and reissues thereof the regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles on public highways by motor truck or other vehicles. Said regulations were promulgated in ex parte M.C. 13, decided April 1, 1940 and became effective June 15, 1940. The pertinent provisions are as follows:

- 77.800 Purpose of regulations in Parts 71-78. (a) To promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation of explosives and other dangerous articles, by common and contract carriers, by motor vehicle engaged in interstate or foreign commerce, the regulations in Parts 71-78 are prescribed to define these articles for motor vehicle transportation purposes, and to state the precautions that must be observed by the carrier in handling them while in transit. It is the duty of such carrier to make the prescribed regulations effective and to thoroughly instruct employees in relation thereto.
- 77.801 Scope of regulations in Parts 71-78. (a) Explosives and other dangerous articles, except such as may not be accepted and transported under Parts 71-78, may be accepted and transported by common and contract carriers by motor vehicle engaged in interstate or foreign commerce, provided they are in proper condition for transportation and are certified as being in compliance with Parts 71-78, and provided the method of manufacture, packing, and storage, so far as they affect safety in transportation, are open to inspection by a duly authorized representative of the initial carrier or of the Bureau of Explosives. Shipments of explosives or other dangerous articles not in proper condition for transportation or loaded or stayed as required, or certified as to proper packing, marking and description as required in Parts 71-78, must not be accepted for transportation or transported.

- 77.807 Improperly packed or damaged shipments in transportation. (a) For the protection of the public against fire, explosion or other, or further hazard, with respect to shipments of explosives or other dangerous articles offered for transportation or in transit by any common or contract carrier by motor vehicle, such carrier shall make immediate report to the Bureau of Explosives, 63 Vesey Street, New York 7, New York, for handling, any of the following emergency matters coming to their attention:
- (1) Instances of packages of explosives or other dangerous articles discovered in transit not properly prepared for transportation in accordance with applicable regulations in Parts 71-78.
 - (2) Motor carrier accidents involving damage to container of explosives or other dangerous articles to such a degree as to necessitate repacking of the articles.
 - (3) Other like emergencies in which any common or contract carrier by motor vehicle is or is likely to become involved, or may offer aid at its command.
 - (4) This section shall in no respect excuse either shipper or carrier by motor vehicle for failure to exercise due care to prevent any departure from any regulation prescribed in Parts 71-78.
- 77.808 Connecting carrier shipments. (a) Shipments of explosives or other dangerous articles offered by connecting transportation lines must comply with Parts 71-78.
- 77.814 Accidents to be reported. (a) Fires or explosions occurring in connection with the transportation, or storage on carrier's property, of explosives or other dangerous articles, and leaking, broken, or seriously damaged containers, must be reported promptly by the highway carrier to the Commission. These reports are required to the end that further use of containers shown by experience to be inefficient may be prohibited by the Commission. Refer Appendix A, page 10 and 11.
- 77.817 Shipping papers. (a) Every motor carrier operating a motor vehicle transporting explosives or other dangerous articles shall require the driver of the vehicle to have in his possession, and the driver shall keep in his possession during the course of such transportation a manifest, memorandum receipt, bill of lading, shipping order, shipping paper, or other memorandum setting forth the following information for each class of such article being transported: The shipping name, the total quantity by weight, volume, or otherwise as appropriate of each kind of explosive or other dangerous article, and the prescribed label when required for the outside container of such article. For shipments of blasting caps or electric blasting caps the shipper must, in addition, show the number of caps in the shipment.

- 77.819 Certificate. (a) Except as provided in this section, no motor carrier may accept for transportation or transport any class A or class B explosives, blasting caps or electric blasting caps in any quantity, or any dangerous articles requiring label as prescribed by Part 73, unless it be certified to him by the shipper's name inserted in the certificate on the label or by the following certificate over the written or stamped facsimile signature of the shipper or his duly authorized agent in the lower left-hand corner of the manifest, memorandum receipt, bill of lading, shipping order, shipping paper, or other memorandum: This is to certify that the above-named articles are properly described, and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.
- 77.820 Waybills, manifests, etc. (a) The waybill, manifest, dispatch, memorandum receipt, bill of lading, transfer sheet or interchange record, when prepared for shipments and used for transferring such shipments to a connecting carrier, must properly describe the articles by name as shown in 72.5, and show the color or kind of label applied.
- 77.854 Disabled vehicles and broken or leaking packages; repairs. (b) Disposition of containers found broken or leaking in transit. When leaks occur in packages or containers during the course of transportation, subsequent to initial loading, disposition of such package or container shall be made by the safest practical means afforded. (c) Disposition of unsafe broken packages. In the event any leaking package or container cannot be safely and adequately repaired for transportation or transported, it shall be stored pending proper disposition in the safest and most expeditious manner possible.

Based upon his investigation, the staff witness was of the opinion that at the time of the shipments of jeans and phosdrin, Valley was in violation of Sections 77.300, 77.801, 77.807, 77.808, 77.814, 77.817, 77.819, 77.820 and 77.854. It was also his opinion that at said time Imperial was in violation of Sections 77.800, 77.801, 77.807, 77.814, 77.817 and 77.854. It was the witness's further opinion that as of December 19, 1961, respondents had inaugurated safety programs relating to the transportation of explosives and dangerous articles and at that time were in compliance with the provisions of General Order No. 99.

The stipulated testimony of Mr. Ward Hoffman was introduced as Exhibit 9. Mr. Hoffman has been the Director of Safety of Valley since January 1, 1962. Since that time he has assertedly gone through the system for the purpose of setting up proper safety procedure and practices and also for the purpose of acquainting terminal personnel with the policies and procedures which he expects to be followed independent of whatever policies and procedures were being followed prior to January, 1962.

Valley introduced in evidence Exhibit 11 which indicates that during the period July 1, 1960 to June 30, 1961, Valley transported without incident 10,726 shipments aggregating 24,562,764 pounds consisting of articles listed in American Trucking Associations Dangerous Articles Tariff No. 10, Cal. P.U.C., No. 5, as Class B Poison.

The president of Imperial testified that he recently posted in all of his terminals a dangerous articles placard relating to the transportation of dangerous articles. He further testified that he placed in the pay envelopes of all employees a bulletin on the handling of dangerous articles.

A representative of the California Department of Public Health testified that Valley was not cooperative in making available information and records pertaining to the shipments of jeans and phosdrin. She suggested that high risk chemicals either be transported alone or in isolated compartments.

In their briefs, respondents argue that General Order No. 99 constitutes an unconstitutional delegation of authority by this Commission in so far as it attempts to adopt all future modifications, amendments and reissues of the Interstate Commerce Commission's regulations for the transportation of explosives and other

dangerous articles by motor truck or other vehicles. They readily admit that this Commission may adopt existing regulations of another agency, but not future regulations. The cases hold that future modifications may be lawfully adopted (U.S.v.Sharpnack, 355 U.S.286).

The Interstate Commerce Commission regulations were first established on April 1, 1940. General Order No. 99 became effective in 1951. Although there have been subsequent amendments and revisions to said federal regulations they have been of an insignificant nature. The provisions are substantially the same now as they were in 1951. The deviations herein considered constitute violations under the provisions both as originally adopted and as subsequently amended.

After consideration, the Commission finds and concludes as follows:

1. That on February 3, 1961, and prior thereto neither Valley nor Imperial had properly instructed their employees in the handling of dangerous articles.

2. That in the transportation of the shipments of phosdrin and jeans Valley was in violation of General Order No. 99 in that Valley failed to comply with Sections 77.800, 77.801, 77.807, 77.808 77.814, 77.817, 77.819, 77.820 and 77.854 of "The Regulations of the Interstate Commerce Commission for the Transportation of Explosives and Other Dangerous Articles on Public Highways by Motor Truck or Other Vehicle."

3. That in the transportation of the shipment of phosdrin, Imperial was in violation of General Order No. 99 in that Imperial failed to comply with Sections 77.800, 77.801, 77.807, 77.814, 77.817 and 77.854 of "The Regulations of the Interstate Commerce Commission for the Transportation of Explosives and Other Dangerous Articles on Public Highways by Motor Truck or Other Vehicle."

4. That as of December 19, 1961, Valley and Imperial had properly instructed their employees in the handling of dangerous articles and were operating in compliance with the provisions of General Order No. 99.

To suspend the operations of respondents would work an undue hardship on their employees and inconvenience a large segment of the shipping public. A penalty in the maximum amount of \$5,000 will therefore be imposed upon Valley and a penalty in the amount of \$2,500 will be imposed upon Imperial.

ORDER

Investigation having been instituted and the Commission being informed in the premises,

IT IS ORDERED that after the effective date hereof and on or before the fortieth day after personal service upon respondents of this order, Valley Motor Lines, Inc., is hereby ordered to pay to this Commission a fine of \$5,000, and Imperial Truck Lines, Inc., is hereby ordered to pay to this Commission a fine of \$2,500.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Valley Motor Lines, Inc., and Imperial Truck Lines, Inc.

The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 28th day of MAY, 1962

[Signature]
President
[Signature]
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