

ORIGINAL

Decision No. 64014

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 Coast Trucking Co. of Atascadero, a corporation; Joe R. Mello, doing business as Mello Truck Lines, and Charles J. Hardy.

Case No. 7124
(Filed May 22, 1961)

David M. Dooley and Matthew J. Dooley, for
Coast Trucking Co. of Atascadero, respondent.

Bernard F. Cummins, for the Commission staff.

O P I N I O N

Public hearings were held before Examiner Rowe on September 13, 1961, and on November 21, 1961, in San Francisco, at which times evidence was adduced and on the latter date the matter was submitted subject to briefs, which have now been received.

The order instituting investigation, dated May 22, 1961, was directed to the question of whether Coast Trucking Co. is a device whereby transportation of property between points in this State is performed for Consolidated Milling Company as shipper at rates less than those prescribed in Minimum Rate Tariff No. 2, in violation of Section 3668 of the Public Utilities Code.

Respondent Coast Trucking Co. of Atascadero is a highway carrier authorized to operate as a radial highway common carrier, a highway contract carrier, and a city carrier. Respondents Joe R. Mello, doing business as Mello Truck Lines, and Charles J. Hardy hold radial highway common carrier permits. All respondents have received Minimum Rate Tariff No. 2 and Distance Table No. 4, and all amendments and supplements thereto.

In 1955 Coast Trucking and Consolidated Milling Company, a shipper of property, were sole proprietorships of Richard Van Hoosear and his wife, Muriel Van Hoosear. Subsequent to 1955 the Van Hoosears incorporated Consolidated Milling Company and Coast Trucking. During the time in question herein, the stock of Consolidated Milling was owned one-third by Richard Van Hoosear, one-third by his wife, Muriel Van Hoosear, and one-third jointly by his daughter and son-in-law, Donald Westerbeke. The milling company's officers and directors were Richard Van Hoosear, president; Muriel Van Hoosear, vice-president; and Donald Westerbeke, secretary-treasurer.

The sole shareholders of Coast Trucking were the Van Hoosears, and the officers and directors thereof were Richard Van Hoosear, president; Muriel Van Hoosear, vice-president, and Lorraine Colbert, secretary-treasurer.

In August 1960 respondent Coast Trucking was the subject of a Field Section investigation which disclosed that the carrier owned a pickup, a short-haul truck of 10 to 12-ton capacity, and three small trailers. The carrier had no yard or terminal facility. It had two people on its payroll, a general manager and a truck driver. Its equipment was used primarily for local drayage in the San Francisco Bay area and could not be used for the transportation of bulk merchandise. Other transportation by this carrier was performed through subhaulers, for which it assessed all shippers, including Consolidated Milling Company, the minimum rates established by the Commission in Minimum Rate Tariff No. 2.

The aforesaid investigation disclosed that during June of 1960 respondent Coast Trucking engaged in approximately 100 shipping transactions, the majority of which were for Consolidated Milling Company. Fourteen shipments in behalf of Consolidated Milling were

effected through respondent Mello and two through respondent Hardy as subhaulers. For these shipments respondent Coast Trucking charged Consolidated Milling the applicable minimum rates and paid respondents Mello and Hardy less than the minimum rates. The total amount of said differential was \$1,872.30, of which amount \$1,825.53 was attributable to respondent Mello and \$46.77 to respondent Hardy.

Since the issuance of the order instituting this proceeding the Van Hoosears have divested themselves of all interest in Consolidated Milling, which has wound up its affairs and was in the process of transferring its assets to a new corporation, Westerbeke Enterprises, the officers of which are Donald Westerbeke, his wife and his mother.

It is the contention of the Commission staff that with respect to the aforesaid transactions there existed such a unity of interest between Coast Trucking and Consolidated Milling that the designation of the former as the prime carrier when subhaulers transported the latter's property constituted a device by means of which property of Consolidated Milling was transported at rates less than the minimum established by Minimum Rate Tariff No. 2. Furthermore, the staff contends that any payments made by Consolidated Milling to Coast Trucking were merely paper transactions and that, in fact, the subhaulers were the prime carriers and were entitled to payment of the full minimum rates. ✓

Respondent Coast Trucking, on the other hand, contends that the evidence fails to show any intent to evade regulation; that in fact respondent at all times cooperated with the Commission staff and otherwise attempted to effect arrangements which would comply with the rules and regulations. In this connection, it points out that the incorporation of Consolidated Milling was prompted by a Commission staff representative who, pursuant to a field investigation in 1955,

noted the similarity of ownership of Coast Trucking and Consolidated Milling and suggested that a division of ownership could be accomplished to the Commission's satisfaction by the incorporation of either Coast Trucking or Consolidated Milling and the addition of equity ownership in the new corporation. Assertedly, acting upon such representations, Consolidated Milling was incorporated, with ownership therein divided in the manner hereinbefore mentioned. The subsequent incorporation of Coast Trucking, however, was prompted by tax and liability considerations.

By way of further argument that there was no intent to evade regulation, respondent Coast Trucking points out that subsequent to the institution of this investigation, the Van Hoosears have divested themselves of their interest in Consolidated Milling in the manner hereinbefore described.

Beyond these contentions, respondent Coast Trucking urges that the alter ego doctrine is not properly applicable to this case; that the evidence fails to show that whatever economic benefit accrued from the use of subhaulers to carry property of Consolidated Milling inured either directly or indirectly to Consolidated Milling or to persons principally interested therein; and finally that the divestment by the Van Hoosears of their interest in Consolidated Milling makes the issues presented in this investigation moot.

Considering Coast Trucking's contention regarding intent, all that need be said is that the only showing of intent necessary to find a violation of Public Utilities Code Section 3668 is knowledge of what was done. The evidence shows that the employment of subhaulers in the premises was done with knowledge of the responsible officers of Coast Trucking.

With respect to the contention that it would be inequitable for the Commission to impose discipline after respondents complied with the advice of the staff representative regarding the incorporation of either Coast Trucking or Consolidated Milling, it should be pointed out that it is a well-established principle of administrative law that statements of policy, administrative opinions, or interpretations of laws and regulations by employees of such an agency cannot be used to preclude the agency from taking whatever action is necessary. Such is the case here.

Finally, in dealing with the contention that the alter ego doctrine is not properly applicable here, the evidence is clear and convincing that notwithstanding the fact that Consolidated Milling at all times paid to Coast Trucking the lawful minimum rates, the ultimate beneficiaries of the less-than-minimum rate transportation involved herein were the stockholders of Consolidated Milling, namely, the Van Hoosears and persons closely related to them. The evidence shows that there was such a unity of ownership, management and control between Consolidated Milling and Coast Trucking as to warrant disregard of Coast Trucking as a separate corporate entity for the purpose of enforcing the minimum rates prescribed by Minimum Rate Tariff No. 2. The subhaulers employed to transport the property of Consolidated Milling were in fact prime carriers who received less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2, and the extent to which the subhaulers received less than the minimum rates is the measure of the benefit which the shipper, in this case Consolidated Milling, received.

Findings and Conclusions

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

1. Respondent Coast Trucking Co. of Atascadero is the holder of radial highway common carrier, highway contract carrier and city carrier permits.

2. During June, 1960, respondent Coast Trucking Co. of Atascadero engaged other permitted highway carriers as subhaulers to transport property of Consolidated Milling Company within this State, to whom Coast Trucking Co. paid less than the minimum rates prescribed by Minimum Rate Tariff No. 2 in respects and amounts as follows:

<u>Invoice No.</u>	<u>Undercharges</u>	<u>Subhauler</u>
149	\$ 126.65	Mello Truck Lines
106	41.60	" " "
123	177.13	" " "
126	76.86	" " "
130	170.13	" " "
144	96.92	" " "
146	26.62	Hardy's Truck Company
158	132.94	Mello Truck Lines
161	168.17	" " "
185	304.64	" " "
204	137.78	" " "
213	60.60	" " "
198	20.15	Hardy's Truck Company
207	68.93	Mello Truck Lines
215	141.93	" " "
216	121.25	" " "
Total	<u>\$1,872.30</u>	

3. For the purpose of enforcing the minimum rates prescribed by Minimum Rate Tariff No. 2, there was such a unity of ownership, management and control between Consolidated Milling Company and Coast Trucking Co. of Atascadero as to warrant disregard of Coast Trucking Co. as a separate corporate entity. The subhaulers employed to transport property of Consolidated Milling Company were in fact prime carriers who received less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2.

4. By reason of the foregoing, Consolidated Milling Company has obtained, in violation of Section 3668 of the Public Utilities Code, transportation of property between points within this State at rates less than the minimum 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 Coast Trucking Co. of Atascadero cease and desist from permitting Consolidated Milling Company or its successors in interest to obtain transportation of property between points within this State at rates less than the minimum rates established by the Commission.

2. That all operating authorities issued to Coast Trucking Co. of Atascadero are hereby suspended for a period of five days; provided, however, that said suspension is hereby deferred pending further order of this Commission. If no further order of this Commission is issued affecting said suspension within one year from the date of issuance of this decision, the suspension shall be vacated by further order of the Commission. ✓

3. That Coast Trucking Co. of Atascadero shall review its records for the purpose of determining all transportation performed for Consolidated Milling Company wherein subhaulers were used to perform the actual transportation between June 1, 1960, and the effective date of this order. Coast Trucking Co. of Atascadero shall then pay to such furnishers of said transportation the difference between the lawful minimum rate applicable to such transportation and any lesser amount previously paid to such furnishers of transportation. Within ninety days after the effective date of this order, Coast Trucking Co. of Atascadero shall file with the Commission a report setting forth the lawful minimum rate for said transportation and the amount paid the furnishers thereof.

4. That respondents Joe R. Mello, doing business as Mello Truck Lines, and Charles J. Hardy, and each of them, shall review their records for the period commencing June 1, 1960, to the effective date of this order for the purpose of determining all instances where

property of Consolidated Milling Company was transported by them for and on account of Coast Trucking Co. of Atascadero, for which said transportation they received less than the minimum rates established by Minimum Rate Tariff No. 2. Thereafter, said respondents shall take such action, including legal action, as may be necessary to collect the amounts of undercharges found after the examination required by this order, and shall notify the Commission in writing upon the consummation of such collections.

5. That on the effective date of this order, the Secretary of the Commission is directed to cause Highway Contract Carrier Permit No. 38-360, Radial Highway Common Carrier Permit No. 38-860, and City Carrier Permit No. 38-7363 issued to Coast Trucking Co. of Atascadero to be amended by inserting therein a requirement that whenever said carrier engages other carriers to transport the property of Consolidated Milling Company, of Westerbeke Enterprises (the new corporation which has acquired the assets of Consolidated Milling Company), or of customers or suppliers of Westerbeke Enterprises, permittee shall pay such other carriers not less than the minimum rates and charges established by the Commission for the transportation performed by such other carriers.

6. That in the event undercharges ordered to be collected by paragraph 4 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondents Joe R. Mello, doing business as Mello Truck Lines, and Charles J. Hardy shall institute legal proceedings and file with the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected and specifying the action taken to collect such undercharges and the result of such action, until such undercharges have been collected in full or until further order of the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Coast Trucking Co. of Atascadero, Joe R. Mello, doing business as Mello Truck Lines, and Charles J. Hardy.

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

Dated at San Francisco, California, this 26th day of JULY, 1962.

George G. Trover
President
Robert C. Mitchell
Edgar Fox
Ernest G. Page
Frederick B. Holcomb
Commissioners