

ORIGINALDecision No. 64337

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, and practices of MARINO)
 BROS. TRUCKING CO., a corporation.)

Case No. 6342

Marquam C. George, for the respondent.Elmer Siostrom and Frank O'Leary, for
the Commission staff.O P I N I O N

On April 5, 1960, the Commission issued Decision No. 59892, in Case No. 6342, which ordered Marino Bros. Trucking Co., a corporation, operating over the public highways as a highway common carrier, a radial highway common carrier, a city carrier and a highway contract carrier, to collect undercharges on transportation performed from January 1, 1959, to the date of the decision. Pursuant thereto, the respondent herein collected \$7,648.26 from the Alpine Packing Co. on October 7, 1960, which was paid by check. On October 10, 1960, the respondent returned \$2,257.20 to the Alpine Packing Co., which prompted the reopening of Case No. 6342.

The case was reopened on October 31, 1961, when an Order Reopening Proceeding was issued by the Commission, which directed that Case No. 6342 be reopened for the purpose of determining whether the respondent failed to comply with the terms of Decision No. 59892, in Case No. 6342.

Public Hearing

A public hearing was held in Stockton on January 25, 1962, before Examiner Edward G. Fraser, during which the respondent made a motion to dismiss the proceeding. This motion was denied by the

Commission on March 13, 1962, and further hearing was held on May 10, 1962, when the matter was submitted.

Facts

The record shows that Alpine Packing Co. paid the respondent \$7,648.26 in undercharges on October 7, 1960, and that the latter returned \$2,257.20 to Alpine Packing Co. on October 10, 1960. The staff interprets this action as an unlawful rebate to a shipper and a violation of the terms of Decision No. 59892. The respondent maintains the sum returned was in payment of a fully substantiated and documented claim which is itemized in the credit slips attached to the freight bills listed in the Order Instituting Investigation.

The office manager of Alpine Packing Co. testified the respondent was hauling fresh beef under refrigeration from Alpine Packing Co. in Stockton to the Kansas City Meat Co. and the King Meat Packing Co., Inc., wholesale butchers in Los Angeles, at the time the transportation was performed which resulted in the claims. He stated the wholesale butchers deducted the amounts shown on the credit slips from what was owing to Alpine Packing Co. on the basis that the meat received was damaged due to "bruised loins", "weight loss", or "discoloration", and that the total deducted from the Alpine account for damaged meat during the period the undercharges were collected amounted to \$7,300. He testified Alpine Packing Co. computed \$2,257.20 of this loss was the fault of the respondent and a claim was presented with supporting documents and paid by the respondent.

A witness called by respondent testified he was responsible for meat leaving the Alpine Packing Co. plant during the period the respondent was hauling for them. He stated the meat left their cold rooms at a temperature of 32^{OF} and was placed in the respondent's trucks. Their consignees were frequently dissatisfied with the

condition of the meat on arrival and he advised the respondent's representatives of these complaints.

The secretary-treasurer of the respondent corporation testified substantially as follows: that respondent has had several problems with refrigerated vans; the metal rails holding the meat have collapsed on several occasions; the galvanized iron hooks from which the meat is suspended have contaminated some loads with microscopic particles of iron; and that the aluminum sides in some vans have discolored carcasses in transit. That he received numerous complaints from Alpine Packing Co. during the period the respondent was hauling for them, but no claims were filed and no deductions made for damaged meat on the freight bills presented for payment by the respondent. That Alpine Packing Co. presented their claim for the first time after they paid the undercharges. That another meat company for whom the respondent hauled deducted their claims for damaged meat from the bills submitted by the respondent, or filed a claim right after the meat was received on each load. That the respondent has not hauled for Alpine Packing Co. since April of 1960, when respondent withdrew from the transportation of refrigerated items. The office manager of the respondent testified he received the check for undercharges and the invoice listing the claims at the same time.

Expert testimony was presented by the staff and respondent which revealed that bruised loins and rounds were caused prior to the time the animal was slaughtered and bled. The experts agreed refrigeration was important and that if temperature in a refrigerated van hauling meat increased to above 45^{°F} some discoloration of the meat and weight loss might occur. One expert testified he would not receive meat with a temperature of 50^{°F} or above, because of shrinkage, weight loss, and the increased growth of bacteria.

Findings

The Commission hereby finds:

1. That the payment of all claims on the transportation of refrigerated meat, which were combined and presented to the carrier by the shipper at the time undercharges were paid, and from 7 to 23 months after the transportation was performed, was improper and an unlawful rebate to a shipper in violation of the terms of Decision No. 59892. Claims should be filed within a reasonable period after the occurrence of the alleged damage or loss upon which they are based. It is also difficult to believe that a shipper would tolerate two years of losses due to a carrier's inability to prevent damage to goods in transit without changing carriers or taking other effective action. It is evident that the claims were not, if claims they were, taken seriously, since they were allowed to continue unresolved for approximately sixteen months. The evidence presented supports the conclusion that the shipper's desire to obtain redress from the carrier did not arise until such time as it was requested to pay undercharges. The respondent made no effort to question the claims and due to the lapse of time could not investigate them. Section 3774 (c) of the Public Utilities Code provides that the operating permits of a highway carrier may be suspended on the grounds of "(c) The violation of any order, decision, rule, ... established by the commission ...".

2. That respondent's certificate and permits should be suspended for a period of ten consecutive days, or, in the alternative, respondent should be required to pay a fine of \$5,000. ✓

O R D E R

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

IT IS ORDERED that:

1. If, on or before the fortieth day after personal service of this order upon respondent, respondent has not paid the fine referred to in paragraph 3 of this order, then the certificate of public convenience and necessity to operate as a highway common carrier, granted by Decision No. 53199, dated June 12, 1956, in Application No. 37963, Radial Highway Common Carrier Permit No. 39-2676, Highway Contract Carrier Permit No. 39-5004 and City Carrier Permit No. 39-5005 shall be suspended for ten consecutive days, starting at 12:01 a.m. on the second Monday following the fortieth day after such personal service. ✓

2. In the event of such suspension, respondent shall not, by leasing the equipment or other facilities used in operations under these permits for the period of suspension, or by any other device, directly or indirectly allow such equipment or facilities to be used to circumvent the suspension; respondent shall post at its terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that its highway common carrier certificate, radial highway common carrier, highway contract carrier and city carrier permits have been suspended by the Commission for a period of ten days; ✓

within five days after such posting it shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

3. As an alternative to the suspension of operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$5,000 to this Commission on or before the fortieth day after personal service of this order upon respondent.

4. Respondent shall take such action, including legal action, as may be necessary to collect the rebate identified herein and shall notify the Commission in writing as soon as the total sum of \$2,257.20 has been collected.

5. In the event the rebate ordered to be collected by paragraph 4 of this order, or any part thereof, remains uncollected one hundred twenty days after the effective date of this order, respondent shall institute legal proceedings to effect collection and shall file with the Commission, on the first Monday of each month thereafter, a report on the status of the legal action, which shall specify whether a full or partial payment has been received, until the rebate has been recovered 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 respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 2nd day of OCTOBER, 1962.

[Signature] President

[Signature]

[Signature]

Commissioners

Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.