

ORIGINAL

Decision No. 64449

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 AZUSA TRANSFER COMPANY, a corporation, and EAGLE EXPRESS, INC.

Case No. 7240

Phil Jacobson for respondents.
A. F. Danna for AeroJet General Corp., interested party.
Paul Hogan and Timothy E. Treacy for the Commission's staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates and practices of Azusa Transfer Company, a corporation, and Eagle Express, Inc., a corporation.

Duly noticed hearings were held in this matter before Examiner Mark V. Chiesa on February 7, March 19 and 20, 1962, at Los Angeles. The matters were heard on a common record although testimony and documentary evidence was separately presented for and against each of the respondents which share a common business address and partial common ownership.

The purpose of the investigation is to determine whether or not either or both of said respondents have violated Sections 494, 3664, 3667, 4013 and 4016 of the Public Utilities Code by charging, demanding, collecting and receiving lesser sums for transportation than the applicable charges prescribed by this Commission.

Oral and documentary evidence having been adduced, the matter was submitted for decision subject to the filing of concurrent briefs on or prior to June 9, 1962. Counsel for respondents and for the Commission's staff having, on or about June 13, 1962, agreed to waive briefs, the matter now stands submitted.

Based upon the evidence of record the Commission finds that:

1. At all times pertinent to this proceeding, respondent Azusa Transfer Company (hereinafter also referred to as Azusa) held and now holds Radial Highway Common Carrier Permit No. 19-29499, Highway Contract Carrier Permit No. 19-29500, City Carrier Permit No. 19-39002, and a certificate of public convenience and necessity to operate as a common carrier issued by this Commission in Decisions Nos. 61309 and 63045. Respondent Eagle Express, Inc. (hereinafter also referred to as Eagle) held and now holds Radial Highway Common Carrier Permit No. 19-47983, Highway Contract Carrier Permit No. 19-47984 and City Carrier Permit No. 19-48112.

2. Each of said respondents have been served with the Commission's Minimum Rate Tariff No. 2 and Distance Table No. 4, and all supplements thereto.

The Azusa Transfer Company Matter (findings continued)

3. During the year 1960, respondent Azusa transported, as a certificated and permitted carrier, shipments between points within the State of California for which incorrect freight charges were assessed, as specifically set forth in Parts 1 to 7, inclusive, and

Parts 9 to 29, inclusive, of Exhibits Nos. 1 and 2 of this proceeding.

A summary of said shipments and amount of undercharges are as follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Amount of Undercharges*</u>	<u>Exhibit Reference</u>
51305	September 1, 1960	\$ 69.36	Exh. No. 2, Part 1
48207	May 5, "	83.13	" " " " 2
51589	September 13, "	96.65	" " " " 3
51714	" 16, "	81.36	" " " " 4
52776	October 26, "	104.10	" " " " 5
52829	" 27, "	33.83	" " " " 6
53272	November 11, "	71.58	" " " " 7
51389	September 6, "	198.84	" " " " 9
51441	" 7, "	72.09	" " " " 10
51442	" 7, "	6.84	" " " " 11
51697	" 16, "	25.44	" " " " 12
52597	October 20, "	81.93	" " " " 13
52729	" 25, "	12.15	" " " " 14
52687	" 24, "	23.76	" " " " 15
53181	November 9, "	190.59	" " " " 16
49436	June 23, "	52.00	" " " " 17
51237	August 3, "	15.23	" " " " 18
51323	September 1, "	53.72	" " " " 19
51641	" 14, "	40.70	" " " " 20
51414	" 6, "	243.51	" " " " 21
51552	" 12, "	26.66	" " " " 22
52759	October 26, "	26.67	" " " " 23
53999	December 13, "	26.67	" " " " 24
50000	July 15, "	117.30	" " " " 25
51440	September 7, "	117.30	" " " " 26
51778	" 20, "	58.65	" " " " 27
51983	" 28, "	58.65	" " " " 28
52103	October 3, "	60.77	" " " " 29
Total undercharges		\$2,049.48	

* A witness for respondent testified that in several of the above shipments shippers were rebilled and full or partial additional payments were made. However, with the exception of Freight Bill No. 51389 (Exhibit No. 2, Part 9) which has been paid in full, the amount of undercharges remaining unpaid are substantially as shown.

4. The aforesaid undercharges resulted from one or more of the following reasons:

Respondent's misapplication and nonconformance with the provisions of Minimum Rate Tariff No. 2, Items 85-C (effective

through July 28, 1960) and 85-D (effective through August 18, 1961) by reason of respondent's transportation of multiple lot shipments without having received the required written information from the consignor, and respondent's failure to issue to the consignor a single multiple lot document for the entire shipment prior to or at the time of the initial pickup as provided in paragraphs 2 and 3 of said Items 85-C and 85-D; respondent's failure to pick up the entire shipment within a period of two days computed from 12:01 a.m. of the day of the initial pickup as provided in paragraph 4 of said Items; rating two or more shipments as one shipment; failure to assess split delivery charges and surcharges; and applying rail rates to shipments between off-rail points, all as more specifically set forth in the footnotes and Appendix "A" of Exhibit No. 2 in this proceeding.

5. The Commission staff's determination that various shipping points were not on-rail, as indicated in Exhibit No. 2, is correct. In the case of Dura Steel Products Company, 1774 East 21st Street, Los Angeles, one of the consignees, we find that said company's plant was not, and is not, a rail point; that the plant has no usable spur track, and that the rails which remain near said plant are part of an abandoned interchange track. We also find that all shipments from the Columbia Geneva Steel Plant at Pittsburg, California, consigned to Dura Steel Products Company in care of Emil Brown, 6309 South Central Avenue, Los Angeles, as listed in Exhibit No. 2, were delivered at 1774 East 21st Street, Los Angeles, the location of the plant of Dura Steel Products Company.

The Eagle Express, Inc. Matter (findings continued)

6. During the year 1960 respondent Eagle transported, as a permitted carrier, shipments between various points within the State of California for which incorrect freight charges were assessed, as specifically set forth in Parts 1 to 11, inclusive, of Exhibits Nos. 3 and 4 of this proceeding. A summary of said shipments and amount of undercharges are as follows:

<u>Freight Bill No.</u>	<u>Date</u>		<u>Amount of Undercharges</u>	<u>Exhibit Reference</u>
4007	April	13, 1960	\$ 487.88	Exh. No. 4, Part 1
4028	"	13, "	67.85	" " " " 2
4084	May	2, "	313.51	" " " " 3
5014	"	6, "	106.97	" " " " 4
5076	"	23, "	105.70	" " " " 5
5101	"	27, "	252.30	" " " " 6
5097	"	27, "	117.08	" " " " 7
5121	June	2, "	281.55	" " " " 8
5739	July	11, "	7.99	" " " " 9
7208	October	25, "	134.74	" " " " 10
7262	December	8, "	17.02	" " " " 11
Total undercharges			\$1,892.59	

7. The aforesaid undercharges resulted from one or more of the reasons mentioned in paragraph 4 of these findings, all as more specifically set forth in the footnotes of Exhibit No. 4 in this proceeding.

Respondents contend that charges were assessed on the basis of the applicable tariffs and the interpretation and application thereof by respondents' employees, and that the rates were correctly applied except that in a few instances rail rates were erroneously charged on the basis of misinformation supplied by shippers or consignees or because respondents were otherwise unaware of the true facts. A tariff consultant and respondents' counsel were of the opinion that Item No. 85 of Minimum Rate Tariff No. 2 is not applicable to shipments moving by motor vehicle on

rail rates. The Commission holds that the rules and regulations as set forth in Item 85 are applicable to such shipments.

The Commission further finds and concludes that:

8. Respondents Azusa Transfer Company, a corporation, and Eagle Express, Inc., a corporation, have violated Sections 494, 3664, 3667 and 4013 of the Public Utilities Code by charging, collecting and receiving a lesser compensation for the transportation of property than the applicable charges in its published tariff and in Minimum Rate Tariff No. 2 and supplements thereto.

9. The operating authority of Azusa Transfer Company and Eagle Express, Inc., granted by the certificate and permits as hereinabove set forth in paragraph 1 of these findings, should be suspended for seven days or, in the alternative, a fine of \$5,000 should be imposed against each respondent, and respondents should be ordered to collect the undercharges hereinabove found. ✓

O R D E R

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

IT IS ORDERED:

1. If, on or before the fortieth day after personal service of this order upon the respondents, they have not paid the fines referred to in paragraph 3 of this order, then Radial Highway Common carrier Permit No. 19-29499, Highway Contract Carrier Permit No. 19-29500, City Carrier Permit No. 19-39002, and the certificate of public convenience and necessity to operate as a highway common carrier, issued to Azusa Transfer Company, a corporation, and Radial Highway Carrier Permit No. 19-47983, Highway Contract Carrier ✓

Permit No. 19-47984 and City Carrier Permit No. 19-48112 issued to Eagle Express, Inc., a corporation, shall be suspended for seven consecutive days commencing at 12:01 a.m., on the second Monday following the fortieth day after such service.

2. In the event of such suspension, respondents shall not, by leasing the equipment or other facilities used in operations under said certificate and 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; respondents shall post at their terminals 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 their certificate and permits have been suspended by the Commission for a period of seven days; within five days after such posting they 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, each respondent may pay a fine of \$5,000 to this Commission on or before the fortieth day after personal service of this order upon respondents.

4. Respondents shall examine their records for the period commencing January 1, 1960 to the date of this decision for the purpose of ascertaining if any additional undercharges have occurred other than those enumerated in this opinion.

5. Within ninety days after the effective date of this order respondents shall complete the examination of their records as hereinabove required by paragraph 4 and file with the Commission a report setting forth all undercharges found pursuant to said examinations.

6. Respondents are hereby directed to take such action, including legal action, as may be necessary to collect the amounts of

undercharges set forth in the preceding opinion, which remain uncollected, together with any additional undercharges found after the examination required by paragraph 4 of this order, and to notify the Commission in writing upon the consummation of such collections.

7. In the event the undercharges ordered to be collected by paragraph 6 of this order or any part of such undercharges remain uncollected one hundred twenty days after the effective date of this order, respondents shall institute legal proceedings to effect collection and shall 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 respondents.

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

Dated at San Francisco, California, this 23rd day of OCTOBER, 1962.

George F. Trover
President
[Signature]
[Signature]
[Signature]
Frederick B. Holladay
Commissioners