

ORIGINALDecision No. 65275

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the opera-)
tions and practices of Applegate)
Drayage Company, a corporation.)

Case No. 7419

Bertram S. Silver, for the respondent.
Timothy E. Treacy, for the Commission staff.O P I N I O N

On August 14, 1962, the Commission instituted an investigation into the operations and practices of Applegate Drayage Company, a corporation operating as a radial highway common carrier, a highway contract carrier and a city carrier, for the purpose of determining whether in the operation of its transportation business the respondent violated Sections 3664, 3667, 4013 and 4016 of the Public Utilities Code by charging and collecting lesser sums than the applicable charges prescribed by this Commission in minimum Rate Tariff No. 2 and supplements thereto; whether the respondent charged and collected distance rates instead of hourly rates without the benefit of written instructions from the shipper, in violation of Section 2 of Minimum Rate Tariff No. 7 and failed to provide the measure or factor on which respondent's charges were based, in violation of Item 93-A of Minimum Rate Tariff No. 7; and whether respondent violated Section 3575 of the Public Utilities Code by using sub-haulers without having a bond on file with this Commission.

Public hearing was held before Examiner Fraser on December 6, 1962 in Sacramento, and on January 28, 1963 in San Francisco, where the matter was submitted.

It was stipulated that the respondent is a California corporation operating under Radial Highway Common Carrier Permit No. 34-2453, Highway Contract Carrier Permit No. 34-2454, and City Carrier Permit No. 34-2793; also that the respondent was served a copy of Minimum Rate Tariffs Nos. 2, 7 and 8, Distance Table No. 4 and General Order No. 102-A, with the supplements and additions thereto. It was agreed that the respondent did not receive copies of the railroad tariffs, which are frequently used with the minimum rate tariffs.

A Commission representative testified that he first visited the office of the respondent on January 2, 3, 4 and 5, 1962; he copied the respondent's records on April 9, 1962 and returned them the next day. On April 30, 1962 he again reviewed the records of the respondent to check the use of subhaulers. He stated he reviewed 568 freight bills, which was all of the transportation performed by the respondent during the months of September, October, November and December, 1961. He removed twenty-six freight bills from the respondent's records along with their supporting documents. He testified he made true and correct photostatic copies of these documents and that they are all in Exhibit No. 1 filed herein. He testified the exhibit is divided into twenty-six numbered parts; the first eight parts of which appear to be straight rate violations; Parts 9 through 14 concern the respondent's free return of pallets to the shipper, when a rate should have been charged; Parts 15 through 19 concern transportation where the respondent hauled for a flat rate per trip without written instructions from the shipper and without charging on a distance or time basis; Parts 20 through 26 are representative of many hauls made by subhaulers when the respondent did not have a subhaul bond on file. The witness testified he then checked the Commission records and discovered no bond had

ever been filed. He notified Mr. Applegate, who later called him to advise that the respondent's insurance agent was to have applied for the bond and had admittedly failed to do so. ✓

The witness testified that the respondent operates with thirteen powered vehicles and thirty-four trailers out of a terminal in Sacramento which includes a yard, shop, office and a warehouse. The Commission records show the respondent's gross earnings for the last quarter of 1961 and the first three quarters of 1962 was \$188,024. The witness identified and authenticated Exhibit No. 2, which contains undercharge letters sent to the respondent in 1955 and 1958, and, also, a notice of violation of General Order No. 102-A dated November 29, 1960. ✓

A rate expert from the Commission staff testified that he took the set of documents which are included as the first fourteen counts of Exhibit No. 1 and formulated Exhibit No. 3, which gives the rate charged by the respondent and the rate computed by the Commission staff on each of the freight bills presented in the first fourteen parts of Exhibit No. 1. He testified the staff computed the rate on the return of empty pallets in the split deliveries of Parts 9, 10 and 11 as though they were returned in each instance from the farthest point to which delivery was made. The evidence put in by the respondent showed that the pallets were always unloaded at and returned from the carrier's terminal in Sacramento and it was therefore stipulated that the undercharges on Part 9 should be reduced to \$11.35, and to \$8.89 on Parts 10 and 11. The witness testified that the corrected undercharges listed in Exhibit No. 3 total \$1,505.73. ✓

The president of the respondent corporation testified for the respondent. He stated they have been in business since November 1, 1945 and were incorporated in 1946 or 1947. He stated 95 percent of respondent's business is under contract and 70 percent is hauled

for rates which are greater than the authorized minimum rate. He testified that Commission investigators have checked the respondent's records about once a year for the past ten years and no complaint was made on the free hauling of pallets before the present case.

The witness stated that he and the other principal stockholder of the respondent do the rating. He testified as follows on the twenty-six parts in Exhibits 1 and 3; the rate used on Parts 1, 2 and 3 was in error due to a failure to read the tariff correctly; on Parts 4 and 6 the loads were a part of a full truckload and he therefore used a truckload rate, which he thought was proper; he rated the load on Parts 5, 7 and 8 as waste rock under Item 130-K of Minimum Rate Tariff No. 7 which provides for a rate based on actual mileage; the staff rated such parts as powdered limestone under Minimum Rate Tariff No. 2, which provides for a rate which must be based on the constructive mileage between the points of origin and delivery as given in the distance tables; Parts 9 through 14 involved the return of empty pallets from the carrier's terminal in North Sacramento to the Walnut Creek Canning Co.; since this investigation was instituted he has been advised that the reference to Item 300 in Item 330 of Minimum Rate Tariff No. 2 refers to Item 300 of the Exception Sheet, which specifies the rate to be charged on returning pallets; prior to receiving this information he had never seen an Exception Sheet and believed the reference was to Item 300 of Minimum Rate Tariff No. 2 which has no rate on returning pallets; on Parts 15 through 19 it was his understanding that he had an agreement with the shipper, although since both parties were satisfied, it was never put in writing; he is also certain that if hourly rates had been imposed on Parts 15 through 19 they would be lower than the rates charged by the respondent; he stated he arranged for a subhaul bond with his insurance agent, who promised to take care of it; since the agent handled his insurance without supervision

he thought no more about it until he was charged with Parts 20 to 26 herein and a Commission representative told him no bond had ever been filed. The witness stated the insurance agent later advised the respondent that he forgot to apply for the bond and further advised the respondent the Commission would be notified by a telephone call and by letter why the bond had never been issued and filed. A staff witness testified in rebuttal that he had received a phone call from the agent and that a survey of the Commission file on this case failed to reveal any letter. The witness for the respondent also testified that all subhauers hired by the respondent were paid promptly and in full. The respondent introduced Exhibit No. 4, which lists the average weekly payroll of its drivers as \$1,300 to \$1,800 plus \$475 for other employees. The exhibit shows fixed weekly expenses of \$1,200 and that respondent issued 1,600 freight bills and handled 5,500 loads in 1961. Exhibit No. 5 is a profit and loss statement of respondent which compares June 30, 1962 entries with those of October 31, 1962. The witness authenticated these exhibits and testified that a suspension of operating authorities would most seriously affect respondent's employees.

Based upon the evidence we hereby find that:

1. Respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier under Radial Highway Common Carrier Permit No. 34-2453, as a highway contract carrier under Highway Contract Carrier Permit No. 34-2454, and as a city carrier under City Carrier Permit No. 34-2793.

2. Respondent was served with copies of General Order No. 102-A, Minimum Rate Tariffs Nos. 2, 7 and 8, Distance Table No. 4, and the supplements and additions to the tariffs and the distance table,

prior to the transportation performed under the freight bills listed in Exhibit No. 1.

3. Respondent assessed and collected charges less than the applicable charges established by this Commission in the applicable tariffs, which resulted in the undercharges enumerated in Exhibit No. 3, in the total sum of \$1,505.73.

4. Respondent charged distance rates for transportation performed, instead of hourly rates, without having a written authority to do so from the shippers for whom the hauls were made and that respondent has failed to provide the measure or factor upon which these charges were based.

5. Respondent has hired and used subhaulers without having a subhauler bond on file with this Commission.

Having found facts as hereinabove set forth, the Commission concludes that:

1. Applegate Drayage Company, a corporation, has violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting lesser sums than the applicable charges prescribed by this Commission in Minimum Rate Tariff No. 2 and supplements thereto.

2. Applegate Drayage Company, a corporation, has violated Section 2 of Minimum Rate Tariff No. 7 by charging and collecting distance rates, instead of hourly rates, without a written authorization from the shippers; and has violated Item 93-A of Minimum Rate Tariff No. 7 by failing to provide the measure or factor on which these charges were based.

3. Applegate Drayage Company, a corporation, has violated Section 3575 of the Public Utilities Code by engaging and using subhaulers without having a bond on file with this Commission.

O R D E R

IT IS ORDERED that:

1. If, on or before the twentieth day after the effective date of this order, Applegate Drayage Company has not paid the fine specified in paragraph 7 of this order, then Radial Highway Common Carrier Permit No. 34-2453, Highway Contract Carrier Permit No. 34-2454 and City Carrier Permit No. 34-2793 issued to Applegate Drayage Company shall hereby be suspended for five consecutive days, starting at 12:01 a.m., on the second Monday following the twentieth day after said effective date. 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.

2. Applegate Drayage Company 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 radial highway common carrier permit, highway contract carrier permit and city carrier permit have been suspended by the Commission for a period of five days. Within five days after such posting Applegate Drayage Company shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

3. Respondent shall examine its records for the period from September 1, 1961 to present time, for the purpose of ascertaining all undercharges that have occurred.

4. Within ninety days after the effective date of this order, respondent shall complete the examination of its records required by paragraph 3 of this order and shall file with the Commission a

report setting forth all undercharges found pursuant to that examination.

5. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, together with those found after the examination required by paragraph 3 of this order, and shall notify the Commission in writing upon the consummation of such collections.

6. In the event undercharges ordered to be collected by paragraph 5 of this order, or any part of such undercharges, remain 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 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.

7. As an alternative to the suspension of operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$3,000 to this Commission on or before the twentieth day after the effective date of this order.

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 Bernardino, California, this 23rd day of APRIL, 1963.

[Signature] President
[Signature]
Fredrick B. Holdeoff
[Signature]
Commissioners