

ORIGINALDecision No. 65310

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 R. W.)
 JONES, JR., and ARTHUR A. AMAREL,)
 doing business as A & J TRUCKING: IRA)
 M. WOOLERY, ROBERT L. BURNS, AETNA)
 KADOI, LLOYD HODGES, D. W. CUSHMAN,)
 C. F. MOORE, SR., C. F. MOORE, JR.)
 and PAUL V. STEVENSON.)

Case No. 7399

Dooley & Dooley, by David N. Dooley, for
 A & J Trucking, respondent.
Richard D. Gravelle, for the Commission
 staff.

O P I N I O N

On July 17, 1962 the Commission instituted its investigation into the operations, practices, rates, charges and contracts of R. W. Jones, Jr., and Arthur A. Amarel, doing business as A & J Trucking; Ira M. Woolery, Robert L. Burns, Aetna Kadoi, Lloyd Hodges, D. W. Cushman, C. F. Moore, Sr., C. F. Moore, Jr., and Paul V. Stevenson.

Pursuant to the order instituting investigation, public hearing was held before Examiner Porter at San Francisco on December 13 and 14, 1962; the matter was submitted on the latter date subject to the filing of briefs. Briefs having been filed, the matter is now ready for decision.

The purpose of the order is to determine whether R. W. Jones, Jr., and Arthur A. Amarel, doing business as A & J Trucking (hereinafter referred to as A & J Trucking), have violated Sections 3668 and 3669 of the Public Utilities Code by assisting, suffering

and permitting a shipper to obtain transportation of its property between points within this State at rates less than those established by the Commission in Minimum Rate Tariff No. 2 and whether respondents have violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging, demanding and receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

There are two issues in this case, one being incorrect billing by A & J Trucking which resulted in undercharges, and the other being whether A & J Trucking (a permit carrier) and R. W. Jones, Jr., doing business as R. W. Jones Grain (a shipper), are so united in interest, management and ownership as to make the use by A & J Trucking of purported subhaulers who receive less than the minimum rate for the transportation of property of R. W. Jones Grain, a device by which R. W. Jones Grain obtains transportation of its property at rates less than those established by the Commission in Minimum Rate Tariff No. 2.

The staff selected a review period of April 26, 1961 through August 8, 1961, and through a rate expert witness, established that undercharges had occurred as set forth in Exhibit 4. Parts 1-10 of said exhibit reflect the undercharges due from R. W. Jones Grain. Parts 11-24, inclusive, of Exhibit 4 reflect undercharges due A & J Trucking from various shippers other than R. W. Jones Grain. The total undercharge is \$320.73.

R. W. Jones, Jr., and Arthur A. Amarel formed a partnership sometime in 1957 to operate a trucking business. They were issued a radial highway common carrier permit on June 24, 1958

and entered into a formal partnership agreement on a 50-50 basis on February 4, 1961. R. W. Jones, Jr., began operations as an independent grain dealer about the middle of 1960 and continues as a sole proprietor in the business at the present time.

The evidence shows that R. W. Jones Grain uses A & J Trucking as a carrier for its grain business whenever possible; that during the month of June, 1961, 260 out of 285 shipments for R. W. Jones Grain by A & J Trucking were transported by subhaulers, all of which involved payments of rates less than the minimum.

The evidence also shows that R. W. Jones Grain and A & J Trucking use the same employees, share the same office space and office equipment.

The evidence further shows that payment by R. W. Jones Grain to A & J Trucking was accomplished by R. W. Jones Grain "advancing" money to A & J Trucking about twice a month, money covering no particular transportation service, invoice or freight bill, and that later, over a period of months, A & J Trucking would invoice R. W. Jones Grain to balance out the advances.

The Commission's records show that R. W. Jones, Jr., and Arthur A. Amarel hold Radial Highway Common Carrier Permit No. 51-827, and that Ira M. Woolery, Robert L. Burns, Aetna Kadoi, Lloyd Hodges, D. W. Cushman, C. F. Moore, Sr., C. F. Moore, Jr., and Paul V. Stevenson hold permits issued by this Commission and all respondents have been served with Minimum Rate Tariff No. 2, Distance Table No. 4 and applicable supplements thereto.

It is obvious that R. W. Jones, as sole proprietor of the Grain company, and equal partner in the A & J Trucking, receives the benefit of reduced transportation charges. For a one-month period 91.2 percent of the shipments transported for R. W. Jones Grain by A & J Trucking were transported by subhaulers who received less than the minimum rate, even assuming that R. W. Jones Grain paid A & J Trucking the minimum rate. The profit that A & J Trucking would receive as alleged prime carrier would ultimately be divided between R. W. Jones, Jr., and Arthur A. Amarel on a 50 percent each basis.

In addition, as shown by Exhibit 4, Parts 1-10, R. W. Jones Grain has not paid A & J Trucking the minimum rate and A & J Trucking has paid the carrier who actually performed the transportation a sum less than that paid by R. W. Jones Grain.

Based upon a consideration of the evidence and arguments herein, the Commission finds that: (1) There exists such a unity of ownership, management and control between R. W. Jones Grain as shipper and A & J Trucking as a highway permit carrier to warrant disregard of their separate entities for the purpose of enforcing the minimum rates prescribed by Minimum Rate Tariff No. 2. (2) The sole ownership of the Grain company by R. W. Jones, Jr. (the shipper) coupled with a 50 percent ownership of A & J Trucking is such an arrangement that when A & J Trucking uses subhaulers to transport property of R. W. Jones Grain and pay said subhaulers less than the minimum rate it is a device by means of which Sections 3668 and 3669 of the Public Utilities Code are violated. (3) The subhaulers were in fact prime carriers who received less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2. (4) Respondents have assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate

Tariff No. 2 as set forth in Exhibit 4 in violation of Sections 3664, 3667 and 3737 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. R. W. Jones, Jr., and Arthur A. Amarel, doing business as A & J Trucking, cease and desist from permitting R. W. Jones Grain to obtain transportation of property between points within the State at rates less than the minimum rates established by the Commission.

2. If, on or before the twentieth day after the effective date of this order, R. W. Jones, Jr., and/or Arthur A. Amarel, respondents, have not paid the fine referred to in paragraph 10 of this order, then Radial Highway Common Carrier Permit No. 51-827 issued to R. W. Jones, Jr., and Arthur A. Amarel shall be suspended for five consecutive days, starting at 12:01 a.m., on the second Monday following the twentieth day after said effective date. Respondents R. W. Jones, Jr., and Arthur A. Amarel shall not, by leasing the equipment or other facilities used in operations under this permit 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.

3. Respondents R. W. Jones, Jr., and Arthur A. Amarel, doing business as A & J Trucking shall post at their 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 their radial highway common carrier permit has been suspended by the Commission for a period of five days. Within five days after such posting respondents shall file with the Commission a copy of such notice,

together with an affidavit setting forth the date and place of posting thereof. ✓
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4. R. W. Jones, Jr., and Arthur A. Amarel, doing business as A & J Trucking, shall review their records relating to all transportation performed in behalf of R. W. Jones Grain wherein A & J Trucking employed other carriers to effect such transportation between August 26, 1961 and the effective date of this order, and shall pay to such other carriers the difference between the lawful minimum rates and charges applicable to such transportation and the amount previously paid to such other carriers.

5. Ira M. Woolery, Robert L. Burns, Aetna Kadoi, Lloyd Hodges, D. W. Cushman, Paul V. Stevenson, C. F. Moore, Sr., and C. F. Moore, Jr., shall review their records relating to all transportation wherein they were engaged by A & J Trucking to transport property in behalf of R. W. Jones Grain between August 26, 1961 and the effective date of this order for the purpose of ascertaining the lawful minimum rates for such transportation, and shall take such action, including legal action, as may be necessary to collect the difference between the lawful minimum rates and the amounts they received for such transportation.

6. Within ninety days after the effective date of this decision R. W. Jones, Jr., and Arthur A. Amarel, doing business as A & J Trucking, Ira M. Woolery, Robert L. Burns, Aetna Kadoi, Lloyd Hodges, D. W. Cushman, Paul V. Stevenson, C. F. Moore, Sr., and C. F. Moore, Jr., shall complete the examination of their records required by paragraphs 4 and 5 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to such examination.

7. Respondents R. W. Jones, Jr., and Arthur A. Amarel, doing business as A & J Trucking, shall examine their records for the

period from August 26, 1961 to the present time for the purpose of ascertaining all undercharges that have occurred, and shall take such action, including legal action, as may be necessary to collect the difference between the lawful minimum rates and the amounts they received for such transportation. ✓
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8. Within ninety days after the effective date of this order, respondents R. W. Jones, Jr., and Arthur A. Amarel, doing business as A & J Trucking, shall complete the examination of their records required by paragraph 7 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

9. In the event charges to be collected as provided by paragraphs 5 and 7 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, respondents shall institute legal proceedings to effect collection and shall submit to the Commission on the first Monday of each month 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.

10. As an alternative to the suspension of operating rights imposed by paragraph 2 of this order, respondents may pay a fine of \$1,000 to this Commission on or before the twentieth day after the effective date of this order.

11. On the effective date of this decision the Secretary of this Commission is directed to cause to be amended Radial Highway Common Carrier Permit No. 51-827 issued to R. W. Jones, Jr., and Arthur A. Amarel by prohibiting said respondents, whenever they

engage other carriers in connection with the transportation of
property for R. W. Jones Grain or of its customers and suppliers,
from paying such other carriers less than the applicable minimum
rates established by the Commission.

The Secretary of the Commission is directed to cause
personal service of this order to be made upon respondents, and this
order shall become effective twenty days after the date of such
service upon the respondents.

Dated at San Francisco, California, this 1st
day of MAY, 1963.

George J. Trover
President
W. E. Mitchell
Wesley H. Hoag
William W. Bennett

Commissioners

Commissioner Frederick B. Holoboff, being
necessarily absent, did not participate
in the disposition of this proceeding.