

ORIGINAL

Decision No. 65793

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations  
and practices of ALLAN ARTHUR  
TRANSPORTATION, INC., a corpora-  
tion.

Case No. 7502

Knapp, Gill, Hibbert & Stevens, by Warren N. Grossman, for respondent Allan Arthur Transportation, Inc., a corporation.  
Timothy E. Treacy and A. I. Winston for the Commission staff.

O P I N I O N

On December 4, 1962, the Commission instituted an investigation into the operations and practices of Allan Arthur Transportation, Inc., a corporation, hereinafter referred to as respondent, for the purpose of determining whether respondent has violated the provisions of the Commission's General Order No. 99, particularly Sections 7.10, 8.11 and 8.15, of Parts 7 and 8 thereof, by failing to have in its files the drivers' certificates of physical examination as required by Section 7.10 of Part 7; by requiring or permitting drivers to drive or operate more hours or to be on duty for longer periods than provided by Section 8.11 of Part 8; and by failing to make monthly reports to this Commission in instances where a driver has been required or permitted to be on duty or to drive or operate for hours in excess of those prescribed by Section 8.15 of Part 8 of the said order.

A duly noticed public hearing was held before Examiner Chiesa on February 20, 1963, at Los Angeles. Oral and documentary evidence having been adduced, the matter was submitted for decision.

Attorneys for respondent and the Commission's staff stipulated that respondent holds a certificate of public convenience and necessity authorizing it to transport livestock as a highway common carrier as set forth in Decision No. 54175, and a radial highway common carrier permit No. 19-52681, for agricultural commodities, and that respondent was served with copies of the Commission's General Order No. 99 and tariffs pertinent to its operating authority.

Evidence was adduced by the testimony of a Commission staff witness, by respondent's vice president and general manager and Exhibits 1 to 9 of record. The staff witness testified that he made a three-day investigation of the books and records of respondent covering the period of May and June of 1962, at which he discussed with respondent officers and/or employees the purpose of the investigation, i.e., to determine whether or not respondent was complying with the provisions of the Commission's General Order No. 99, and particularly Parts 7 and 8 thereof. He testified that respondent did not have on file certificates of physical examination of all of its drivers, had permitted drivers to drive or operate more hours and for longer periods than prescribed, and had failed to make monthly reports to the Commission of the instances where drivers had been required or had been permitted to drive for longer periods than prescribed, in violation, respectively, of Sections 7.10, 8.11 and 8.15 of Parts 7 and 8 of said General Order No. 99,

as more specifically set forth in Exhibits 1, 1-A, 1-B and 1-C in this proceeding.

The staff presented additional evidence (Exhibits 2 to 6, inclusive) showing that respondent, on four separate occasions, between February 26, 1957, and July 16, 1959, was informed by letters from this Commission of various violations by it of the provisions of General Order No. 99, including Sections 7.10, 8.11 and 8.15, which violations, the record shows, were subsequently corrected by respondent.

Respondent's witness explained his company's intrastate and interstate operations, the difficulty which livestock certificated carriers had in competing with permitted carriers because the latter were not subject to the regulations of General Order No. 99, and also because, on long hauls and overtime driving assignments, the permitted carrier drivers usually are not paid the union scale wages. He also testified that of the four drivers whose certification of physical examination had not been filed, two were no longer employed and two certificates were subsequently filed, that the failure to file said certificates had been unintentional and due to laxity of employees.

The Commission finds:

1. That from December 24, 1956, to the date of hearing herein, Allan Arthur Transportation, Inc., a corporation, was the holder of a certificate of public convenience and necessity authorizing the transportation of livestock between points within the State of California, acquired by Decision No. 54175.
2. That from August 20, 1959, to date of hearing herein, Allan Arthur Transportation, Inc., was the holder of Radial Highway

Common Carrier Permit No. 19-52681 authorizing operations between points within the State of California.

3. That prior to January 1, 1962, respondent had been served with all tariffs, and supplements thereto, applicable to its operations as a certificated and/or permitted carrier and with a copy of General Order No. 99. ✓

4. That in May and June of 1962 respondent did not have in its files a certificate of a qualified doctor of medicine for Ken Asbra, Reed Bastian, Dave Cantrell and Ralph Capehart, driver employees of respondent, as required by Section 7.10, Part 7 of General Order No. 99. ✓

5. That respondent permitted or required its drivers to drive or operate for more than 12 hours in the aggregate in any 15-hour period on duty, and permitted or required its drivers to be on duty more than 15 hours in any 24-hour period with less than the required eight consecutive hours off duty within said 24-hour period.

6. That between May 15 and June 28, 1962, respondent permitted driver Ken Asbra to exceed the number of hours on duty without the required rest period on twelve separate occasions, as more specifically set forth on page 3 of Exhibit 1.

7. That between May 13 and June 23, 1962, respondent permitted driver Reed Bastian to exceed the number of hours on duty without the required rest period on seven separate occasions, as more specifically set forth on pages 3 and 4 of Exhibit 1.

8. That between May 2 and June 23, 1962, respondent permitted driver Dave Cantrell to exceed the number of hours on duty without the required rest period on twelve separate occasions, as more specifically set forth on pages 4 and 5 of Exhibit 1.

9. That between June 6 and June 20, 1962, respondent permitted driver Ralph Capehart to exceed the number of hours on duty without the required rest period on three separate occasions, as more specifically set forth on page 5 of Exhibit 1.

10. That between May 12 and June 28, 1962, respondent permitted driver Zay Ford to exceed the number of hours on duty without the required rest period on ten separate occasions, as more specifically set forth on pages 5, 6 and 7 of Exhibit 1.

11. That between May 8 and June 14, 1962, respondent permitted driver Paul Kraxburger to exceed the number of hours on duty without the required rest period on ten separate occasions, as more specifically set forth on pages 7 and 8 of Exhibit 1.

12. That between May 8 and June 28, 1962, respondent permitted driver Walt Kuppens to exceed the number of hours on duty without the required rest period on four separate occasions, as more specifically set forth on page 8 of Exhibit 1.

13. That between May 5 and June 28, 1962, respondent permitted driver Ernst Leoni to exceed the number of hours on duty without the required rest period on eleven separate occasions, as more specifically set forth on pages 9 and 10 of Exhibit 1.

14. That between May 12 and June 29, 1962, respondent permitted driver Richard Tritz to exceed the number of hours on duty without the required rest period on eleven separate occasions, as more specifically set forth on pages 10 and 11 of Exhibit 1.

15. That respondent failed to file a monthly report to this Commission prior to May 15 or June 15 or July 15, in the year 1962, of the instances, as hereinabove set forth in these findings and Exhibit 1 in this proceeding, when its drivers were required or permitted to be on duty or to drive or operate hours in excess of those as prescribed in Part 3 of General Order No. 99.

The Commission concludes:

That Allan Arthur Transportation, Inc., a corporation, has violated the provisions of Section 7.10 of Part 7, and Sections 8.11 and 8.15 of Part 8 of the Commission's General Order No. 99.

O R D E R

IT IS ORDERED that:

1. If, on or before the twentieth day after the effective date of this order, respondent has not paid the fine referred to in paragraph 3 of this order, then Radial Highway Common Carrier Permit No. 19-52681 and the authority granted to Allan Arthur Transportation, Inc., a corporation, by Decision No. 54175 to operate as a highway common carrier, shall be suspended for ten 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. In the event the suspension as provided in paragraph 1 hereof becomes effective, 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 radial highway common carrier permit and highway common carrier certificate have been suspended by the Commission for a period of ten days. Within five days after such posting respondent 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 \$3,000 to this Commission on or before the twentieth day after the effective date of this order.

4. Allan Arthur Transportation, Inc., shall forthwith cease and desist from violating the provisions of Section 7.10 of Part 7, and Sections 8.11 and 8.15 of Part 8 of General Order No. 99, and shall observe the provisions of any tariff, decision or order applicable to respondent.

The Secretary of the Commission is directed to cause personal service of this order to be made upon the respondent, Allan Arthur Transportation, Inc.

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

Dated at San Francisco, California, this 30<sup>th</sup> day of JULY, 1963.

William L. Bennett  
President  
George A. Tupper  
Fredrick B. Holbrook  
Commissioners