

Decision No. 65859**ORIGINAL**

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 TRANS-)
 ARROW, INC., a corporation; GERALD P.)
 KALLIAN and JAMES H. KAYIAN, doing)
 business as TRIANGLE FREIGHT LINES;)
 KINGS COUNTY TRUCK LINES, a corpora-)
 tion; TOBY T. TSUMA and TOSHIYUKI)
 OMOTE, doing business as TRI-CITY)
 TRUCKING; RALPH PIPKIN; YOUNG'S)
 COMMERCIAL TRANSFER, INC., a corpora-)
 tion; and DELROSE TRUCKING CO., INC.,)
 a corporation.

Case No. 7561

Ted W. Isles, Robert N. Stark and Thomas Chan,
for Trans-Arrow, Inc.; Louis J. Seely, for
Kings County Truck Lines; Hatsuo Morita, for
Ralph Pipkin; and J. R. Young, for Young's
Commercial Transfer, Inc.; respondents.
Timothy E. Treacy, for the Commission staff.

O P I N I O N

On February 19, 1963, the Commission issued its order of investigation into the operations, practices, rates, charges and contracts of Trans-Arrow, Inc., a corporation, which is operating over the public highways as a radial highway common carrier, for the purpose of determining whether Trans-Arrow, Inc., has violated Sections 3664, 3667 and 3737 of the Public Utilities Code, or any of them, by charging, demanding, collecting or receiving lesser sums for transportation of property than the minimum applicable charges prescribed by this Commission in Minimum Rate Tariffs Nos. 2 and 8 and supplements thereto, by not basing the rate charged on the actual or gross weight of shipments, and by failing to assess off-rail charges or loading and/or unloading charges in connection with rail rates and split pickup charges where applicable; and

whether through common ownership, management or control of respondent Trans-Arrow, Inc., and its authorization to operate as a radial highway common carrier and by the use of "subhaulers" employed by said Trans-Arrow, Inc., General Produce has sought to obtain or has obtained transportation of property at less than the minimum rates or charges prescribed by the Commission in violation of Section 3668 of the Public Utilities Code; and whether respondents Gerald P. Kalian and James H. Kayian, doing business as Triangle Freight Lines; Kings County Truck Lines, a corporation; Toby T. Tsuma and Toshiyuki Omote, doing business as Tri-City Trucking; Ralph Pipkin; Young's Commercial Transfer, Inc., a corporation; and Delrose Trucking Co., Inc., a corporation; or any of them, as highway permit carriers, while operating as subhaulers for Trans-Arrow, Inc., have charged, demanded, collected, received or accepted for the transportation of property or for any service in connection therewith, rates or charges less than the minimum rates and charges applicable to such transportation in violation of Section 3667 of the Public Utilities Code.

Pursuant to the order of investigation a public hearing was held at Sacramento before Examiner Edward G. Fraser on April 23, 1963, and the matter was submitted subject to the filing of late-filed exhibits, which have been received.

Stipulations

It was stipulated that respondent Trans-Arrow, Inc., holds Radial Highway Common Carrier Permit No. 34-2099 and Highway Contract Carrier Permit No. 34-3435 and that respondent Trans-Arrow, Inc., was served with Minimum Rate Tariffs Nos. 2 and 8 and Distance Table No. 4, along with all corrections and supplements thereto, prior to the dates on which the transportation alleged herein was performed. It was also stipulated that the rates and undercharges in the first 27 counts of the staff rate exhibit (No. 4) are correct and that the undercharges total \$892.39.

Position of the Commission Staff

A representative of the Commission Transportation Division testified that he investigated the respondent's (Trans-Arrow, Inc.) records and operations on September 24, 25, 26 and October 11, 1962, at the Sacramento office of Trans-Arrow, Inc. He stated that he reviewed 350 freight bills which itemize some of the transportation performed by Trans-Arrow, Inc., from May 1, 1962 to September 3, 1962. The witness identified and authenticated Exhibit No. 1 by testifying that he made the copies which comprise the exhibit on October 26, 1962, and that the copies are identical representations of the originals. He also testified that certain points of origin and destination the respondent Trans-Arrow, Inc., rated as "on rail" were actually not located on rail.

A rate expert from the Commission staff introduced Exhibit No. 4, which lists the rate assessed and charged by Trans-Arrow, Inc., and the rate computed by the Commission staff. The exhibit has nine parts which show that respondent charged and assessed a rate less than the minimum rates promulgated in Minimum Rate Tariffs Nos. 2 and 8, and on one count also includes improper documentation on a split delivery shipment; eleven parts where respondent failed to assess a rate based on the gross weight of onions and potatoes, and used a lower weight; six parts where the respondent failed to assess the required off-rail surcharge where the point of origin or destination is off rail; and ten parts where respondent failed to assess the loading and unloading charge applicable where alternate rail rates are assessed. Parts 28 through 34 are counts where Trans-Arrow, Inc., employed subhaulers and paid them less than the applicable minimum rates. The difference between the rate paid the subhauler and the applicable minimum rate on these seven counts totals \$615.79. The authenticity of the first 27 parts of Exhibit

No. 4 and the total undercharges of \$292.39 found thereon were admitted by stipulation. (Less Part 14 which was canceled at the request of the Commission staff.)

The Commission investigator testified as follows: that he questioned the accountant for Trans-Arrow, Inc., who advised him that Trans-Arrow, Inc., has issued 10,000 shares of common stock at a par value of \$10 a share, which is held equally by the following seven men: Thomas S. Chan, Daniel Chan, Edward S. Chan, Davis Sun, Bing L. Chong, Sam L. Chong and Chan Tai Oy. This information was corroborated by the application for transfer of permits (Exhibit No. 5) filed with this Commission, by Trans-Arrow, Inc., and General Produce Co., a partnership, which lists the following officers of the corporation: President, Thomas Chan; Vice President, Daniel Chan; Secretary, Edward S. Chan; and Treasurer, Davis Sun.

The Commission witness stated the accountant for Trans-Arrow, Inc., told him the men who own stock in Trans-Arrow, Inc., are also the partners in General Produce Company. This information is corroborated by the "Certificate of Doing Business Under a Fictitious Name" (Exhibit No. 2) filed in the office of the Sacramento County Clerk on February 3, 1940, which lists the following men as partners in General Produce Company: Bing L. Chong, Sam L. Chong, Chan Tai Oy, Davis Sun, Daniel S. Chan, Edward S. Chan and Thomas S. Chan. Exhibits Nos. 2 and 6 also indicate that both respondent Trans-Arrow, Inc., and the General Produce Company have a mailing address at 16th and North "B" Streets in Sacramento.

The Commission representative testified that Trans-Arrow, Inc., has a shop, office and terminal at 1630 North "B" Street in Sacramento, which it appears the corporation may share with General Produce Company, and that the 1962 Equipment List filed by the respondent Trans-Arrow, Inc., shows it has 14 tractors and 13 trailers, with 12 (of the 13) being refrigerated trailers.

The Commission staff presented further testimony which showed that the other respondents herein hold the following operating authorities from this Commission and were served with the applicable tariffs and Distance Table No. 4 before the dates on which the transportation mentioned herein was performed.

<u>Respondent</u>	<u>Operating Authority</u>
Gerald P. Kalian and James H. Kayian; permit transferred to Gerald P. Kalian on June 30, 1962.	Radial Permit
Kings County Truck Lines	Radial Permit Contract Permit City Permit
Toby Tsuma and Toshiyuki Omote	Radial Permit Contract Permit
Ralph Pipkin	Radial Permit Contract Permit
Young's Commercial Transfer, Inc.	Radial Permit Contract Permit
Delrose Trucking Co., Inc.	Radial Permit

It was shown by the documents in Exhibit No. 1 that the carriers named above acted as subhaulers for Trans-Arrow, Inc., on the transportation performed under Parts 28 through 34 (Exhibits Nos. 1 and 4) for General Produce Company. The staff alleged that these respondents should be required to collect the full minimum rate as prime carriers. Staff counsel stated it was expected that the subhaulers would not be penalized, but merely ordered to collect undercharges.

The staff and the respondent Trans-Arrow, Inc., combined to introduce Decision No. 59546, dated January 1960, in Case No. 6222 and Case No. 6272, into evidence and to ask that it be officially noticed by this Commission. This decision holds the partners of General Produce Company to be in violation of Sections 3664 and 3667 of the Public Utilities Code and to be innocent of any violation of Section 3668 of the Public Utilities Code because evidence

was lacking on the issue of what the lowest minimum rate would be on the violations alleged.

Mr. Thomas Chan testified for Trans-Arrow, Inc., and General Produce Company substantially as follows: he has been a partner in General Produce Company for 25 years and an officer of Trans-Arrow, Inc., since it was incorporated in 1961; there are a total of 4,200 shares of stock in Trans-Arrow, Inc., with each of the following men holding 600 shares: Thomas Chan, Daniel Chan, Edward Chan, Davis Sun, Bing Chong, Sam Chong and Chan Tai Oy; no stock has been transferred since the corporation was formed; Trans-Arrow, Inc., was formed and incorporated because the partners found that General Produce Company was becoming involved in a large trucking operation, which greatly increased their individual liability, and because their attorney advised them they should form a corporation and handle the trucking operation separately for tax purposes (Exhibits Nos. 6 and 7); after Trans-Arrow, Inc., was formed, 30 trucks and trailers were obtained from the General Produce Company; these trucks were marked with the respondent's name and all customers were advised that Trans-Arrow, Inc., would operate the trucks and do the hauling; the partnership and corporation use different stationery and different clerical personnel; they both have accounts at the same bank, but the accounts are entirely separate and each company has its own checkbook; they file separate tax returns and each owns its own property, with nothing being used jointly or transferred from one to the other; Trans-Arrow, Inc., has a parking lot, which is 3/4ths of a block square, and a terminal; Trans-Arrow, Inc., repairs the General Produce Company trucks and sells gas to them, along with the general public; the corporation operates all of the facilities at the parking lot, but leases the area from General Produce Company; Trans-Arrow, Inc.,

employs about 20 people and the partnership about 80; some of the drivers now employed by Trans-Arrow, Inc., have worked for General Produce Company in the past, but none of the employees have worked for both companies at the same time; the General Produce Company main office is in the produce terminal, where it has been for thirty years; and it is located at least three blocks from Trans-Arrow, Inc.

He testified the gross revenue of Trans-Arrow, Inc., from August 1, 1961 to July 31, 1962, was \$469,529; during the same period a total of \$31,173 was paid to subhaulers, which is less than eight percent of the gross revenue; usually subhaulers were paid about 1.5 percent under the minimum rate, although a few received 30 percent less; the subhaulers served many other shippers of Trans-Arrow, Inc., in addition to General Produce Company, although the gross revenue Trans-Arrow, Inc., received from General Produce Company during the listed period was \$235,000; the total profit of Trans-Arrow, Inc., on the subhauls was about \$4,500; subhaulers were used only when Trans-Arrow, Inc., did not have equipment available; respondent and General Produce Company did not realize hiring subhaulers was improper, since neither of the permits held by Trans-Arrow, Inc., forbid the hiring of subhaulers (this fact was stipulated to by the Commission staff); the practice of hiring subhaulers to transport the goods of General Produce Company was discontinued in August 1962, when the Commission representative advised them the practice was improper; Trans-Arrow, Inc., still calls other carriers to haul goods for General Produce

Company as prime carriers; whoever does the hauling now simply bills the General Produce Company for the full minimum rate allowed under the tariff concerned.

The representative of Kings County Truck Lines made a statement, not under oath, that they operated as a subhauler for General Produce Company from February 23, 1962 to June 18, 1962, without knowing of the relation between Trans-Arrow, Inc., and General Produce Company and without realizing Kings County Truck Lines was violating any provisions of the Public Utilities Code. The Commission staff and the respondent Trans-Arrow, Inc., presented closing statements and quoted numerous legal authorities.

Based on the evidence herein the Commission finds that:

1. At all times mentioned herein Trans-Arrow, Inc., a corporation, has been engaged in the transportation of property over the public highways under the authority of Radial Highway Common Carrier Permit No. 34-2099 and Highway Contract Carrier Permit No. 34-3435.
2. At all times here concerned Trans-Arrow, Inc., has been served with the Commission's Minimum Rate Tariffs Nos. 2 and 8 and Distance Table No. 4, along with the supplements and amendments thereto.
3. Prior to the time the transportation listed herein was performed, the respondents listed below were all served with copies of the Commission's Minimum Rate Tariff No. 8, Distance Table No. 4, and the supplements and amendments thereto; and at all times mentioned herein they have been engaged in the transportation of property over the public highways under the operating authorities indicated on the following list:

<u>Respondent</u>	<u>Operating Authority</u>
Gerald P. Kalian and James H. Kayian, dba Triangle Freight Lines	Radial Permit No. 10-3754; permit was transferred to Gerald P. Kalian on June 30, 1962.
Kings County Truck Lines, a corporation	Radial Permit No. 54-3146; Contract Permit No. 54-3147; City Carrier Permit No. 54-3640.
Toby Tsuma and Toshiyuki Omote, dba Tri-City Trucking	Radial Permit No. 43-4088; Contract Permit No. 37-4619.
Ralph Pipkin	Radial Permit No. 54-816; Contract Permit No. 13-2020.
Young's Commercial Transfer, Inc.	Radial Permit No. 54-4161; Contract Permit No. 54-4162.
Delrose Trucking Co., Inc.	Radial Permit No. 1-8594.

4. Trans-Arrow, Inc., has charged, demanded, collected and received lesser sums for the transportation of property than the minimum applicable charges prescribed by this Commission in Minimum Rate Tariffs Nos. 2 and 8 and supplements thereto, in that Trans-Arrow, Inc., used inapplicable rates, failed to assess charges on the actual or gross weight of shipments, failed to assess off-rail, loading and unloading charges in connection with rail rates, and failed to assess split pickup charges where applicable.

5. The original rule in California which provides a basis for disregarding the existence of a corporation and considering it as being a part of an individual or another organization is quoted in Minifie v. Rowley, as follows:

"First, that the corporation is not only influenced and governed by that person, but that there is such a unity of interest and ownership that the individuality, or separateness, of the said person

and corporation has ceased; second, that the facts are such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice." (Minifie v. Rowley (1921), 187 Cal. 481, 487.)

It is evident from the record herein that Trans-Arrow, Inc., and General Produce Company are owned and managed by the same group of people. This fact, in itself, satisfies the first requirement of the Minifie v. Rowley rule, since all of the carrier's corporate stock is owned by the shipper. (Soule Transportation, Inc., Case 7105, Decision 63103, dated January 9, 1962; 59 Cal. P.U.C. 260.)

This Commission has already ruled on when a disregard of the corporate entity will promote injustice. As we said in the Soule case, supra, it is not necessary to find that moneys were actually remitted to the ostensible shipper, either in the form of payments representing the difference between amounts paid to the ostensible prime carrier and what the carrier paid to the sub-haulers or in the form of dividends, distribution of capital on dissolution, or otherwise. Thus, the fact that General Produce Company at all times paid the lawful minimum rates to Trans-Arrow, Inc., is of no consequence. The significant fact is that, to the extent that Trans-Arrow, Inc., paid less than the minimum rates for transportation of property in behalf of General Produce Company, Trans-Arrow, Inc., thereby reduced its expenses and increased its income, which increased income ultimately inures to the benefit of the General Produce Company, since the seven partners who are doing business as General Produce Company are also the stockholders of Trans-Arrow, Inc. By reason of the

foregoing, the General Produce Company benefits notwithstanding that the profits or surplus of Trans-Arrow, Inc., remain undistributed.

The respondent Trans-Arrow, Inc., has revealed that less than eight percent of its gross business is performed by subhaulers. This does not affect the application of the rule, even though it seems evident that the use of subhaulers constitutes a very small portion of Trans-Arrow's total operation. The rule we must apply is stated in the opinion on the Commission Investigation of J. and V. Trucking Co. as follows:

"From the standpoint of enforcing minimum rates it is not necessary that it be shown that a particular transaction has resulted in that which the statute condemns but only that the transaction be reasonably susceptible of resulting in the evil sought to be avoided." (Inv. of J. and V. Trucking Co., Case 6567, Decision 63227, dated February 6, 1962, 59 Cal. P.U.C. 337, 339. See also Kohn v. Kohn (1950) 95 Cal. App. 2nd 708, 718.)

Based upon a consideration of the evidence and arguments herein, the Commission finds that there exists such a unity of ownership, management and control between General Produce Company, as the shipper, and respondent Trans-Arrow, Inc., as a highway permit carrier, as to warrant disregard of General Produce Company as a separate entity for the purpose of enforcing the minimum rates prescribed by Minimum Rate Tariffs Nos. 2 and 8, and the extent to which the subhaulers received less than the minimum rates is the measure of the benefit which the shipper, in this case General Produce Company, unjustly received.

6. Gerald P. Kallian and James H. Kayian, doing business as Triangle Freight Lines, Kings County Truck Lines, Toby T. Tsuma and Toshiyuki Omote, doing business as Tri-City Trucking, Ralph Pipkin, Young's Commercial Transfer, Inc., and Delrose Trucking Co., Inc.,

were in fact prime carriers on the hauling they performed for General Produce Company as subhaulers of Trans-Arrow, Inc., and they all should review their records relating to all transportation wherein they were engaged by Trans-Arrow, Inc., to transport property in behalf of General Produce Company between January 1, 1962, and the effective date of this order for the purpose of ascertaining the lawful minimum rates for such transportation, and should take such action, including legal action, as may be necessary to collect the differences between the lawful minimum rates and the amounts they received for such transportation.

7. Trans-Arrow, Inc., should review its records relating to all transportation performed in behalf of General Produce Company wherein Trans-Arrow, Inc., employed other carriers to effect such transportation between January 1, 1962, and the effective date of this order, and should 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.

Based upon the above findings we conclude that:

1. Respondent Trans-Arrow, Inc., has violated Sections 3664, 3667, 3737 and 3668 of the Public Utilities Code.

2. Respondents Gerald P. Kallian and James H. Kayian, doing business as Triangle Freight Lines, Kings County Truck Lines, Toby T. Tsuma and Toshiyuki Omote, doing business as Tri-City Trucking, Ralph Pipkin, Young's Commercial Transfer, Inc., and Delrose Trucking Co., Inc., have violated Section 3667 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. 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. 34-2099 and Highway Contract Carrier Permit No. 34-3435 issued to Trans-Arrow, Inc., by prohibiting said Trans-Arrow, Inc., whenever it engages other carriers in connection with the transportation of property for Thomas Chan, Daniel S. Chan, Edward Chan, Bing L. Chong, Sam L. Chong, Chan Tai Oy and Davis Sun, individually, or doing business as General Produce Company, or of the customers and suppliers of General Produce Company, from paying such other carriers less than the applicable minimum rates established by the Commission.

2. If, on or before the twentieth day after the effective date of this order, respondent Trans-Arrow, Inc., has not paid the fine referred to in paragraph 3 of this order, then Radial Highway Common Carrier Permit No. 34-2099 and Highway Contract Carrier Permit No. 34-3435 issued to Trans-Arrow, Inc., 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.

3. In the event the suspension as provided in paragraph 2 hereof becomes effective, respondent Trans-Arrow, Inc., 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 contract carrier permit have been suspended by the Commission for a period of five 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.

4. Respondent Trans-Arrow, Inc., shall examine its records for the period from January 1, 1962, to the present time, for the purpose of ascertaining all undercharges that have occurred.

5. Within ninety days after the effective date of this order, respondent Trans-Arrow, Inc., shall complete the examination of its records required by paragraph 4 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

6. Respondent Trans-Arrow, Inc., 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 4 of this order, and shall notify the Commission in writing upon the consummation of such collections.

7. In the event 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, respondent Trans-Arrow, Inc., 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.

8. As an alternative to the suspension of operating rights imposed by paragraph 2 of this order, respondent Trans-Arrow, Inc., may pay a fine of \$3,500 to this Commission on or before the twentieth day after the effective date of this order.

9. Trans-Arrow, Inc., shall review its records relating to all transportation performed in behalf of General Produce Company wherein Trans-Arrow, Inc., employed other carriers to effect such transportation between January 1, 1962, 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.

10. Gerald P. Kalian and James H. Kayian, doing business as Triangle Freight Lines, Kings County Truck Lines, Toby T. Tsuma and Toshiyuki Omote, doing business as Tri-City Trucking, Ralph Pipkin, Young's Commercial Transfer, Inc., and Delrose Trucking Co., Inc., shall review their records relating to all transportation wherein they were engaged by Trans-Arrow, Inc., to transport property in behalf of General Produce Company between January 1, 1962, 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.

11. Within ninety days after the effective date of this decision, Trans-Arrow, Inc., Gerald P. Kalian and James H. Kayian

doing business as Triangle Freight Lines, Kings County Truck Lines, Toby T. Tsuma and Toshiyuki Omote, doing business as Tri-City Trucking, Ralph Pipkin, Young's Commercial Transfer, Inc., and Delrose Trucking Co., Inc., shall file with this Commission a report setting forth the lawful minimum rates for the transportation and the amount paid Gerald P. Kalian and James H. Kayian, doing business as Triangle Freight Lines, Kings County Truck Lines, Toby T. Tsuma and Toshiyuki Omote, doing business as Tri-City Trucking, Ralph Pipkin, Young's Commercial Transfer, Inc., and Delrose Trucking Co., Inc., as indicated by the examination required by paragraphs 9 and 10 hereof.

12. In the event charges to be collected as provided by paragraph 10 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Gerald P. Kalian and James H. Kayian, doing business as Triangle Freight Lines, Kings County Truck Lines, Toby T. Tsuma and Toshiyuki Omote, doing business as Tri-City Trucking, Ralph Pipkin, Young's Commercial Transfer, Inc., and Delrose Trucking Co., Inc., 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 charges and the result thereof, until such charges have been collected in full or until further order of this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Trans-Arrow, Inc., Gerald P. Kalian and James H. Kayian, doing business as Triangle Freight Lines, Kings County Truck Lines, Toby T. Tsuma and Toshiyuki

Omote, doing business as Tri-City Trucking, Ralph Pipkin, Young's Commercial Transfer, Inc., and Delrose Trucking Co., Inc. The effective date of this order as to any of the above respondents shall be twenty days after the completion of service on such respondent.

Dated at San Francisco, California, this 6th day of August, 1963.

William B. Burnett
President
George L. Trover
Fredrick B. Hallock
Commissioner

I dissent in part.

It was stipulated between Trans-Arrow, Inc., and the staff that the rates and undercharges in the first twenty-seven counts of Exhibit No. 4 are correct and that the undercharges total \$892.39.

Parts 28 through 34 of Exhibit No. 4 allege that Trans-Arrow, Inc., employed subhaulers and paid them less than the applicable minimum rates. Trans-Arrow, Inc., a radial highway common carrier, and General Produce Company, a shipper, are owned and managed by the same group of people. Therefore, the staff contended any employment of subhaulers by Trans-Arrow, Inc., while transporting property for General Produce Company at less than minimum rates was violative of Section 3668.

The gross revenue of Trans-Arrow, Inc., from August 1, 1961, to July 31, 1962, was \$469,529. During this period, a total of \$31,173 was paid to subhaulers, which is less than eight percent of the gross revenue and included in this amount was the charges assessed many other shippers of Trans-Arrow, Inc., in addition to General Produce Company. In fact, approximately only one half of the total gross revenue for the listed period was received from General Produce Company.

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The record reveals that neither of the permits held by Trans-Arrow, Inc., forbid the hiring of subhaulers (contrary to the present Commission practice of so restricting permits). It is my opinion that they were privileged to do so under the circumstances involved herein. Unrevealed regulation does not promote justice.


Peter E. Mitchell, Commissioner