

ORIGINALDecision No. 65905

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Investigation into the operations,) | |
| rates, charges and practices of) | |
| ALLAN ARTHUR TRANSPORTATION, INC.,) | Case No. 7458 |
| a corporation.) | |

Warren N. Grossman, for Allan Arthur
Transportation, Inc., respondent.
Timothy E. Treacy, for the Commission staff.

O P I N I O N

The respondent Allan Arthur Transportation, Inc., is a corporation engaged in the business of transporting property over the highways of this state for compensation as a highway common carrier and as a radial highway common carrier.

This investigation was instituted by the Commission to determine whether respondent has violated various sections of the Public Utilities Code by making or granting any preference or advantage by any means or device to Goldring Packing Company of Vernon, California, or by refunding or remitting in any manner or by any device a portion of the lawful compensation for the transportation of the property of said Goldring Packing Company.

A public hearing was held before Examiner Cline at Los Angeles on February 28, 1963, and the matter was taken under submission upon the filing of the closing brief of the Commission staff on April 22, 1963.

The principal issue to be resolved in this proceeding is whether the interstate transportation of livestock performed by a carrier without compensation exclusively for one shipper for whom

said carrier operates as a highway common carrier and, also, performs for compensation intrastate transportation of livestock, constitutes a preference, advantage and rebate under Sections 453, 458 and 494 of the Public Utilities Code, where said carrier does not and will not perform similar interstate transportation for other shippers for whom the carrier also performs similar intrastate transportation for compensation.

On June 29, 1961, the date of the commencement of the investigation of respondent's operations by the Commission staff, respondent was operating four tractors and four semitrailers, 25 trucks and 29 pull trailers. All of the trucks and trailers were equipped with livestock bodies. At the time of the investigation respondent employed 32 drivers, six shop employees and five office employees. Respondent's gross earnings for the year ending December 31, 1962, amounted to \$509,445.

No evidence was offered in respondent's behalf.

Respondent's counsel, however, pointed out that Section 206 of the Interstate Commerce Act exempts the interstate shipment of livestock and agricultural commodities from rate regulation. He urged that this Commission has no jurisdiction whatsoever to inquire into the transportation relationship of respondent as an interstate carrier with an interstate shipper, and at the outset of the proceeding he moved that the investigation be dismissed. Said motion was taken under submission and is hereby denied. Respondent's petition for issuance of an examiner's proposed report is also denied.

The evidence on behalf of the Commission staff shows that from April 2 through August 2, 1961, respondent transported for

compensation 353 shipments of livestock for the account of Goldring Packing Company with points of origin and destination both in California.

During the period April 18 through June 25, 1961, respondent also transported for Goldring Packing Company 46 shipments of livestock originating at points in Arizona and terminating at points in California. The aggregate weight of these shipments was 1,620,320 pounds. The Commission staff witness reviewed respondent's bank deposit records for the period April 14 through August 23 but was unable to find any record of payment for any of these shipments. Respondent's vice president and manager admitted that no charges were made for these shipments for Goldring Packing Company in explanation of the fact that no invoice numbers were shown in connection with these shipments. This officer also admitted that respondent had to pay Goldring Packing Company a 10 percent commission and that this was done by making one free interstate shipment on the average for every 10 intrastate shipments for which a charge was made. Respondent's officer also admitted that respondent would not make this 10 percent deduction available to packing houses other than Goldring Packing Company.

During the period April 20 through June 25, 1961, respondent transported for compensation 57 shipments of livestock originating at points in Arizona and terminating at points in California for shippers other than Goldring Packing Company. The range of charges for these shipments varies from a minimum of 50 cents per 100 pounds to a maximum of 75 cents per 100 pounds. The charge most frequently shown was 55 cents per 100 pounds. The secretary-treasurer and auditor of respondent informed the Commission staff witness that the 55-cent charge was the rate established by a so-called gentleman's agreement tariff in effect in Arizona.

If the 55-cent rate is applied to the 1,620,320 pounds aggregate weight of the 46 free shipments for Goldring Packing Company, the resulting amount is \$8,911.76. In addition, there would be a bedding charge of \$1.50 to \$2 per shipment. If an aggregate bedding charge of \$69 is added to \$8,911.76, the total amount would be \$8,980.76.

Exhibit No. 5 consists of the freight bills and invoices for four shipments, of which three were in April and one in May, 1961. Exhibit No. 5 shows that respondent transported for compensation four shipments of livestock between points in California for shippers included in the group of shippers for whom respondent performed transportation of livestock for compensation between points of origin in Arizona and points of destination in California.

The staff also introduced evidence in aggravation. The Commission takes official notice of its Decision No. 58305 issued in Case No. 6217 on April 21, 1959, wherein respondent Allan Arthur Transportation, Inc., was ordered to collect undercharges and its certificate of public convenience and necessity to operate as a highway common carrier was suspended for three consecutive days. As a result of this order, respondent collected undercharges in the amount of \$4,695.65. The record also shows that a letter dated October 2, 1959, listing four shipments of livestock involving undercharges was sent to respondent by the Commission. As a result of this letter, respondent collected undercharges in the amount of \$441.67.

In mitigation the counsel for respondent urges the Commission to consider the novelty of the issues involved in this proceeding.

After consideration of the record in this proceeding the Commission finds that:

1. During the periods involving the transactions under investigation in this proceeding the respondent was authorized to operate (1) as a highway common carrier pursuant to Decision No. 54175, issued December 4, 1956, in Application No. 38449, and Decision No. 44523, issued July 11, 1950, in Application No. 31327, and (2) as a radial highway common carrier pursuant to Radial Highway Common Carrier Permit No. 19-52681, dated August 20, 1959.

2. Respondent is a party to Western Motor Tariff Bureau Livestock Carrier Local Freight Tariff No. 1.

3. From April 2 through August 2 of 1961, respondent transported for compensation 353 shipments of livestock for the account of Goldring Packing Company with points both of origin and destination in California. In the absence of evidence to the contrary the Commission presumes that the charges made by respondent and collected from Goldring Packing Company were lawful charges pursuant to said Western Motor Tariff Bureau Livestock Carrier Local Freight Tariff No. 1.

4. During April and May of 1961, respondent transported for compensation four shipments of livestock between points in California for shippers included in the group of shippers for whom respondent also performed transportation of livestock for compensation between points of origin in Arizona and points of destination in California during the period April 20 through June 25, 1961. In the absence of evidence to the contrary the Commission presumes that the charges for these four intrastate shipments made by respondent and collected from the shippers were lawful charges pursuant to said Western Motor Tariff Bureau Livestock Carrier Local Freight Tariff No. 1.

5. During the period April 20 through June 25, 1961, respondent transported for compensation 57 shipments of livestock originating at points in Arizona and terminating at points in California. The range of charges for these shipments varied from a minimum of 50 cents to a maximum of 75 cents per 100 pounds, the charge most frequently being made being 55 cents per 100 pounds which is the rate established in a so-called "gentleman's agreement" tariff for such shipments.

6. During the period April 18 through June 25, 1961, respondent transported for Goldring Packing Company 46 shipments of livestock having an aggregate weight of 1,620,320 pounds and originating at points of origin in Arizona and terminating at points of destination in California. These shipments were carried free of charge for Goldring Packing Company. A reasonable charge for these shipments and the charge which respondent would have made to any of its intrastate shippers other than Goldring Packing Company is 55 cents per 100 pounds plus a bedding charge of \$1.50 per shipment or an aggregate charge of \$8,980.76.

7. By reason of having made the aforesaid shipments free of charge for Goldring Packing Company respondent has made and granted a preference and advantage to Goldring Packing Company in the sum of \$8,980.76.

8. The transportation of shipments by respondent of livestock free of charge in interstate commerce for Goldring Packing Company is a device and means by which respondent assisted, suffered and permitted Goldring Packing Company to obtain transportation between points in this state at less than lawful rates in the amount of \$8,980.76.

9. The transportation of shipments by respondent of livestock free of charge in interstate commerce for Goldring Packing Company is a device by which respondent has refunded and remitted \$8,980.76 of the lawful rates and charges made and collected by respondent from Goldring Packing Company for intrastate shipments of livestock.

10. Respondent has subjected its intrastate shippers of livestock, other than Goldring Packing Company, to prejudice and disadvantage by its refusal to transport shipments of livestock in interstate commerce free of charge for them while at the same time transporting such shipments free of charge for Goldring Packing Company.

Based upon the foregoing findings of fact the Commission concludes:

1. Respondent has violated Sections 453, 458 and 494 of the Public Utilities Code.

2. The construction placed by the Commission herein upon said Sections 453, 458 and 494 of the Public Utilities Code does not place any unreasonable, undue or other burden upon interstate commerce in violation of the Constitution and statutes of the United States.

O R D E R

IT IS ORDERED that:

1. Respondent Allan Arthur Transportation, Inc., cease and desist transporting shipments of livestock in interstate commerce free of charge for Goldring Packing Company as a commission, preference and advantage on its intrastate shipments of livestock for Goldring Packing Company and as a device to refund and remit to Goldring Packing Company a portion of the lawful rates and charges made on its intrastate shipments of livestock for Goldring Packing Company.

2. If, on or before the twentieth day after the effective date of this order, respondent has not paid the fine referred to in paragraph 8 of this order, then (1) the highway common carrier certificate issued to respondent pursuant to Decision No. 54175, in Application No. 38449 and Decision No. 44523, in Application No. 31327 and (2) Radial Highway Common Carrier Permit No. 19-52681 issued to respondent shall be suspended for twenty consecutive days, starting at 12:01 a.m., on October 7, 1963. Respondent shall not, by leasing the equipment or other facilities used in operations under the aforesaid certificate and permit for the period of the 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 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 highway common carrier certificate and its radial highway common carrier permit have been suspended by the Commission for a period of twenty 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 shall examine his records for the period April 18, 1961, to the present time for the purpose of ascertaining all preferences, advantages, refunds and remittances which have been made by respondent to Goldring Packing Company in connection with the intrastate shipment of livestock.

5. Within ninety days after the effective date of this order, respondent 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 preferences, advantages, refunds and remittances found pursuant to that examination.

6. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of preferences, advantages, refunds and remittances 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 the preferences, advantages, refunds and remittances ordered to be collected by paragraph 6 of this order, or any part thereof, 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 amounts remaining to be collected and specifying the action taken to collect such amounts, and the results of such action, until such amounts have been collected in full or until further order of this Commission.

8. As an alternative to the suspension of operating rights imposed by paragraph 2 of this order, respondent may pay a fine of \$5,000 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 Francisco, California, this 20th day of August, 1963.

J. J. Sullivan
President
George T. Crover
Fredrick B. Hallock
Commissioners