

ORIGINAL

Decision No. 66337

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CROWN BY-PRODUCTS CO., a California)
corporation, doing business as CROWN)
TRANSPORTATION, for authority to)
waive or compromise undercharges for)
motor carrier transportation.)

Application No. 43929
(Filed November 16, 1961)

Orrick, Dahlquist, Herrington & Sutcliffe, by
Warren A. Palmer, for applicant.

Donald B. Day and John R. Laurie, for the
Commission staff.

O P I N I O N

This application was heard before Examiner Thompson at San Francisco on April 30, 1963 and was submitted July 2, 1963 on the filing of briefs. The matter is ready for decision.

Applicant, a radial highway common carrier, seeks authority to waive collection of, or to compromise, undercharges arising out of certain shipments of scrap paper from Santa Clara to Red Bluff. In support of its request, applicant asserts that the collection of charges at the minimum rates would be "unfair, excessive, unreasonable and discriminatory". The application states that the authority and relief are sought under the provisions of Sections 734, 3666 and 3667 of the Public Utilities Code.

The Commission staff, hereinafter sometimes called staff, contends that the application does not state a cause of action on which the Commission has power to act, and alternatively, that the facts do not provide justification for the relief sought.

The facts herein are not disputed. Applicant transported approximately 39 shipments of scrap paper from Santa Clara to Red Bluff during the period March 16, 1960 through March 10, 1961 for which it charged and collected from Diamond National Corporation charges computed at the rate of 32 cents per 100 pounds, minimum weight 30,000 pounds. This rate was maintained by Southern Pacific Company in Pacific Southcoast Freight Bureau Tariff 300 for the transportation of scrap paper from Red Bluff to Santa Clara, the reverse direction. During the period involved, the rates maintained by the Southern Pacific Company for the transportation from Santa Clara to Red Bluff were 44 cents per 100 pounds (March 10, 1960 to February 26, 1961) and 45 cents per 100 pounds (February 27, 1961 to March 16, 1961) and said rates were the lowest of the lawful rates that could have been charged by applicant.^{1/} The Transportation Division of the Commission discovered the undercharges and on or about March 16, 1961 applicant received a letter from the Commission directing it to undertake to collect the undercharges. When applicant and the shipper were informed that the 32-cent rate was not applicable to the transportation, the Southern Pacific Company was requested to establish a reduced commodity rate from Santa Clara to Red Bluff. On June 2, 1961, Southern Pacific Company, through its agent Pacific Southcoast Freight Bureau, effected emergency reductions of the rail commodity rates from Santa Clara to Red Bluff to 31½ cents per 100 pounds, minimum weight 60,000 pounds, and to 35½ cents per 100 pounds, minimum weight 40,000 pounds.

^{1/} Under the provisions of Minimum Rate Tariff No. 2, as required by Section 3663 of the Public Utilities Code, highway carriers are authorized to charge the published rates of common carriers by land when such rates are lower than those specifically set forth and prescribed in the minimum rate tariff.

Pursuant to the directive set forth in the letter of March 16, 1961, applicant reviewed all of its freight bills for the transportation here involved and computed the total undercharges to be \$2,214.95. On November 16, 1961 it filed this application requesting authority to waive the collection of said undercharges.

In support of its request, applicant argues that the undercharges resulted from a mistake; that the 32-cent rate was reasonable, evidenced by the fact that a lower rate was subsequently published by Southern Pacific Company and made effective without protest; and that had applicant and the shipper been aware at the inception of the transportation that the 32-cent rate was not applicable they could have taken steps to make a 32-cent rate effective without difficulty, evidenced by the fact that it was done as soon as they became aware of the actual circumstances.

The 32-cent rate maintained in Pacific Southcoast Freight Bureau Tariff 300 for transportation from Red Bluff to Santa Clara, the applicable minimum rates of 44 cents and 45 cents, and the subsequently published 31½-cent rate have not been found by the Commission to be the just, reasonable and nondiscriminatory minimum rates to be charged by all radial highway common carriers, including applicant. They are the rates of railroads which may be charged by highway carriers for the transportation of the same kind of property between the same points pursuant to provisions of the statute. (Pub. Util. Code, Sec. 3663.) During the period March 16, 1960 to September 23, 1960, the rate found by the Commission to be the just, reasonable and nondiscriminatory rate for this transportation was 45 cents per 100 pounds, minimum weight 24,000 pounds, plus certain surcharges. Said rate was established in Minimum Rate Tariff No. 2. For the period September 23, 1960 to March 10, 1961,

the just, reasonable and nondiscriminatory minimum rate established by the Commission was 47 cents plus surcharges. The finding by the Commission that rates higher than those applicable were just, reasonable and nondiscriminatory is a presumption that the applicable rates were not excessive and were not discriminatory. The voluntary reduction in rate by the Southern Pacific Company on June 2, 1961, and the fact that the applicable minimum rate from Red Bluff to Santa Clara was lower than that from Santa Clara to Red Bluff does not overcome that presumption.

As stated above, the staff contends that the Commission does not have power to grant the authority being sought. We need not consider those issues, however, because assuming arguendo that the Commission does have power to award reparation in connection with the rates of radial highway common carriers, to authorize a radial highway common carrier to charge less than the minimum rates retroactively, or to authorize radial highway common carriers to remit a portion of the minimum rates established by the Commission, the facts here do not warrant the granting of that authority.

Applicant has not shown that the applicable minimum rate was excessive, discriminatory or otherwise unlawful. Such showing is necessary to an award of reparation.

Applicant has not shown that the 32-cent rate was compensatory. Such showing is indispensable to a finding that a proposed rate less than the minimum rate is reasonable (Karl A. Weber, 60 Cal. P.U.C. 59).

The argument that applicant and shipper made a bona fide mistake and were later able to have Southern Pacific Company reduce its rates for the transportation involved is not persuasive that applicant should be authorized to remit the undercharges. There

were no carriers that could have lawfully transported the shipments at the 32-cent rate so that the shipper was not damaged merely because of its choice of carrier. The Commission has the obligation and duty to maintain the integrity of the established minimum rates and therefore in the exercise of its authority under Section 3667 of the Public Utilities Code must give that the utmost consideration. The circumstances that permission to remit a portion of the minimum rates will convenience both the carrier and the shipper and will not directly be adverse to the interests of other carriers or shippers are not enough to warrant the granting of that authority.

The foregoing compels the conclusion that the application should be denied.

The directive contained in the letter of March 16, 1961, that applicant shall, if necessary, proceed in court to collect the undercharges is outstanding. It is readily apparent that if applicant does take legal action against the shipper to collect the undercharges, the shipper has a valid defense in that the statute of limitations has run (Church v. Pub. Util. Comm., 51 C.2d 399). It therefore is an idle gesture to continue to require applicant to prosecute a claim to recover the undercharges; therefore, applicant should be released from the directive to take legal action to recover the undercharges.

The record does not show whether applicant has already collected any portion of the undercharges. We point out that the order herein will not authorize applicant to refund any of the undercharges which it may have collected. Any such refund will constitute a violation of Section 3667 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. Crown By-Products Co., a corporation, doing business as Crown Transportation, is hereby relieved and released from any obligation or duty arising from any directives heretofore given it by the Commission to proceed in court to collect the undercharges arising from transportation performed by it for Diamond National Corporation of scrap paper from Santa Clara to Red Bluff during the period March 16, 1960 to and including March 10, 1961.

2. In all other respects the application herein is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 19th day of November, 1963.

William A. Bennett
 President

Carl W. Kease

Fredrick B. Holdhoff

Commissioners

I concur in the order.
George L. Grover