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ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of J & R TRUCKING COMPANY, INC., a California corporation.

Case No. 7642

John Rotelli, for respondent.

William C. Bricca and Frank O'Leary, for the Commission staff.

O P I N I O N

By its order dated June 4, 1963, the Commission instituted an investigation into the operations, rates and practices of J & R Trucking Company, Inc.

A public hearing was held before Examiner Porter on August 19, 1963, at San Francisco, on which date the matter was submitted.

Respondent presently conducts operations pursuant to radial highway common carrier, contract carrier and city carrier permits.

Respondent has a terminal in San Francisco, California. It owns and operates 22 pieces of equipment. Its total gross revenue for the last two quarters of 1961 and the first two quarters of 1962 was \$728,125.

It was stipulated that respondent had been served with Minimum Rate Tariffs Nos. 2 and 8, Distance Table No. 4 and applicable supplements thereto.

A representative of the Commission's staff visited respondent's place of business and checked its records for the period January through October 1962. During said period respondent transported approximately 1,351 shipments. The underlying documents relating to 24 shipments were taken from respondent's files and, based upon the data taken from said shipping documents, a rate study was prepared and introduced in evidence as Exhibit No. 1. The rate study shows undercharges in each instance.

Parts 1, 2, 6, 8 and 9 of Exhibit No. 1 involve the transportation of frozen strawberries and peaches. The staff's computation was based upon the assumption that the packages were transported in cardboard containers. Respondent presented evidence that the containers were in fact tin-containers and we so find; therefore, respondent's computations were correct.

Parts 3, 4, 7, 10, 11, 12 and 13 of Exhibit No. 1 were conceded by the respondent to be undercharged. These undercharges had been pointed out to respondent by an investigator of the staff prior to the investigation herein. Respondent had corrected its computation of the rates on this type of shipment to reflect the correct rate ever since the error was pointed out by the first investigator.

Parts 5 and 14: the respondent admits its error, but points out shipments were to points not reoccurring in respondent's business.

The remaining 10 parts of Exhibit No. 1 resulted in undercharges because respondent had failed to assess "refrigeration charges" when refrigeration had been provided. The respondent testified in this regard that the shipper had not requested

refrigeration; however, the documents contained in Exhibit No. 2 contained instructions that temperature be maintained at a certain level. The evidence further shows that John Rotelli who controls J & R Trucking Company, Inc., also holds Radial Highway Common Carrier Permit No. 38-7451.

Discussion

Of the original 24 shipments selected by the staff five were shown to have been rated correctly. Seven had been pointed out to respondent as being in error during a prior investigation and respondent had corrected its method of rating this type of shipment. Ten shipments resulted in undercharges because while refrigeration had not been requested it had been provided and not charged for. Two shipments that went to points not reoccurring in respondent's business were undercharged.

Considering these 19 shipments we would have a 1.4 percent error in respondent's billing practice. The total undercharges would be \$627.54 of which \$429.81 is for the shipments involving refrigeration, \$137.78 for the shipments pointed out in the prior investigation as being in error.

On the facts of this case we do not feel that the type of violations herein found require a fine or suspension to be imposed upon respondent.

After consideration the Commission finds that:

1. Respondent operates pursuant to radial highway common carrier, highway contract carrier and city carrier permits.
2. Respondent was served with appropriate tariffs and distance table.
3. Respondent charged less than the lawfully prescribed minimum rates in the instance as set forth in Exhibit No. 1, excluding parts 1, 2, 6, 8 and 9.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3684 and 3737 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. Respondent 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.

2. Within ninety days after the effective date of this order, respondent shall complete the examination of its records required by paragraph 1 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

3. Respondent shall take such action, including legal action, as may be necessary to collect the amount of undercharges set forth herein, together with those found after the examination required by paragraph 1 of this order, and shall notify the Commission in writing upon the consummation of such collections.

4. In the event undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, 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 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.

5. Respondent shall cease and desist from charging, demanding, collecting or receiving a lesser compensation for transportation of property than the applicable minimum rates and charges prescribed by the Commission.

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 2nd day of DECEMBER, 1963.

William B. Burnett
President

Carl E. [unclear]

Carroll [unclear]

George H. [unclear]

Fredrick B. Holhoff
Commissioners