

Decision No. 66482**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates, charges and practices of  
CASCADE REFRIGERATED LINES, INC.,  
a corporation.

Case No. 7386

Marquam C. George, for respondent.Bernard F. Cummins, for the  
Commission staff.O P I N I O N

This investigation was instituted June 26, 1962 to determine whether or not respondent, Cascade Refrigerated Lines, Inc., has paid unlawful commissions to an employee of one of respondent's shippers and thereby violated the provisions of the Public Utilities Code prohibiting the paying of such commission or refund. A hearing was held in Stockton, September 12, 1962. The matter was submitted subject to the filing of briefs. The Commission staff has filed a brief, but respondent has not exercised its option to file a reply. The case is ready for decision.

The only witnesses were two associate transportation representatives from the License and Compliance Branch of the Commission staff. The staff witnesses testified to the results of an examination of respondent's books and to admissions made by respondent's president in the course of the staff investigation. This testimony was not disputed; there is no conflict in the evidence.

The record shows that over a period of several months in 1960 and 1961, respondent regularly and secretly made payments to the traffic manager of one of respondent's shippers. These payments were for the purpose of inducing, and did induce, the traffic

manager to select respondent as a carrier for that shipper's goods. The payments generally ranged from \$200 per month to \$100 per week, depending on the amount of business thus channelled to respondent; in the period covered by the staff examination, the payments totalled \$3,315.

Respondent presented no direct testimony and did not appear as a witness. The only defense offered at the hearing was that the shipper did not know of respondent's payments to the traffic manager and did not receive any benefit from them, and that therefore the payments did not constitute unlawful rebates or commissions.

The United States Supreme Court has recently rejected a similar defense in a prosecution under the Elkins Act. (U. S. v. Braverman, 10 L.ed.2d 444.) The Court held that, to constitute an unlawful rebate, such a payment need not be paid to the shipper, and there need be no showing that the shipper has benefitted from it. The language of the pertinent California statutes, although not exactly the same as that of the Elkins Act, is comparable. We follow the Braverman case. The dominant purpose of both the federal and California statutes is to protect the integrity of transportation rates and to prevent discrimination. Section 3667 of the Public Utilities Code prohibits "any" commission, and Section 3670 expressly provides that "no person" may obtain "any" allowance in connection with or growing out of the transportation of property. We hold that this legislation, like the Elkins Act, "no more intended to allow third persons to tamper with the statutory scheme than it intended to allow carriers and shippers themselves to do so." (U. S. v. Braverman, 10 L.ed.2d at 447.)

This record presents an aggravated case. Respondent's violations were deliberate and inexcusable, and a severe penalty is clearly warranted. However, respondent's permits are already under suspension for failure to pay transportation rate fund fees, and at

the hearing respondent's counsel advised that respondent had been forced out of business for financial reasons. Since continued failure to pay such fees will apparently lead to a revocation of the permits in any event, a fine is a more appropriate penalty here. Even so, no purpose would be served by levying a fine beyond the ability of respondent to pay. Under all the circumstances, we have determined that a fine of \$1,000 is reasonable. It bears emphasis that a heavier fine would be in order if respondent had not already been forced to cease operations.

The Commission finds as follows: ✓

1. Respondent holds Highway Contract Carrier Permit No. 50-4418 and Radial Highway Common Carrier Permit No. 50-4440.

2. By order of the Commission, said permits are currently under suspension for failure to pay the fees provided for in Section 5003 of the Public Utilities Code.

3. Respondent was timely served with copies of the Commission's Minimum Rate Tariff No. 2 and Distance Table No. 4.

4. During the period from October 28, 1960 through September 20, 1961, respondent made a number of cash payments to Hugo Ramirez, who was then the traffic manager of Wilson & Company. Said payments totaled \$3,315. Said payments were made solely in return for respondent's selection by Ramirez as a for-hire carrier of property for Wilson & Company. Respondent did thereby obtain selection as a carrier of such property.

5. Said payments were made secretly, and (except for Ramirez' knowledge) Wilson & Company did not have knowledge thereof prior to the Commission staff investigation which was commenced October 10, 1961.

6. Wilson & Company did not receive any of said payments or any part thereof and did not benefit from them.

7. In selecting respondent as a carrier for Wilson & Company, Ramirez acted within the scope of his employment as traffic manager for Wilson & Company.

8. Said payments by respondent to Ramirez were commissions paid without authority to this Commission.

9. Said payments by respondent to Ramirez were allowances and rebates in connection with and growing out of a transportation of property by respondent for Wilson & Company.

10. Said transportation of property by respondent for Wilson & Company was performed pursuant to said permits.

11. Except for said payments made by respondent to Ramirez, Wilson & Company paid respondent for said transportation either the minimum rates established by this Commission or more than said minimum rates.

The Commission concludes that respondent has violated Sections 3667 and 3670 of the Public Utilities Code and that respondent should pay a fine of \$1,000.

ORDER

IT IS ORDERED that on or before the twentieth day after the effective date of this order, respondent shall pay to this Commission a fine of \$1,000.

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 17<sup>th</sup> day of DECEMBER, 1963.

*William K. Brown*  
President  
*W. E. Mitchell*  
*Charles E. DeLoe*  
*George T. Grover*  
*Fredrick B. Holdoff*  
Commissioners