

Decision No. 66535

CONFIDENTIAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates
and practices of CLAWSON TRUCKING CO.,
INC., a California corporation.

Case No. 7082

Carlos G. Badger, for Clawson Trucking Co., Inc.,
respondent.
Delbert A. Thomas, for Glass Containers Corp.;
James T. Mastoris, for General Freight Corp.;
and Hamp L. Hampton; interested parties.
Elinore Charles, for the Commission staff.

O P I N I O N

On March 21, 1961, the Commission issued its order insti-
tuting investigation into the operations, rates and practices of
Clawson Trucking Co., Inc., for the purpose of determining whether
respondent has violated Section 3667 of the Public Utilities Code
by the payment of commissions to Hamp L. Hampton, an employee of
Glass Containers Corp., a shipper.

Public hearing in this matter was held before Examiner
Wilson E. Cline at San Francisco on April 19, 1961. At the close
of the hearing the matter was taken under submission. It was
stipulated that respondent Clawson Trucking Co., Inc. has been
issued Radial Highway Common Carrier Permit No. 50-976 and Highway
Contract Carrier Permit No. 50-4279.

Evidence was introduced to show that during the period
from May 31, 1960, to October 11, 1960, respondent Clawson Trucking Co.
Inc. performed transportation services for Glass Containers Corp.
for compensation. During the period May 11, 1960, to October 14,
1960, the respondent made payments of \$50 every two weeks, or a

total of \$600, to H.L.H. Trucking. These amounts were entered in the books of respondent as transportation expense.

Hamp L. Hampton was employed by Glass Containers Corp. as supervisor of warehouse and shipping operations at its Antioch plant. As warehouse supervisor he was charged with the responsibility of storing ware in the warehouse and maintaining adequate stock and inventory records. As shipping supervisor he was charged with the responsibility of shipping ware to the customers as orders were received from the sales office. When a shipping order was received, he prepared the necessary papers, saw that adequate trucking was available, and then dispatched the trucks. If Clawson Trucking Co., Inc. had trucks available, it handled the shipment. If not, then Mr. Hampton arranged to have another carrier handle it. Normally, Mr. Hampton's duties as an employee for Glass Containers Corp. were performed during an eight-hour day ending at 5:00 p.m., five days a week. He was not called upon to perform work after hours except in case of an emergency such as might require protection of the warehouse goods from unusual weather. His base salary was \$680 per month, plus a production bonus ranging from \$80 to \$110 per month. He took no part in the negotiation of the agreement for carriage between Clawson Trucking Co., Inc. and Glass Containers Corp., which was negotiated by the top management of Glass Containers Corp. at its Fullerton office. The traffic department in Hayward took care of rating shipments and all of the duties regarding the billing to the various parties involved. Mr. Hampton had no duties with respect to the traffic department.

Mr. Hampton was also engaged as a dispatcher by Clawson Trucking Co., Inc. to perform services after leaving the plant of Glass Containers Corp. at five o'clock in the evening. Either

Mr. Clawson or his Modesto dispatcher would call Mr. Hampton at his home to advise him how to assign the drivers. Mr. Hampton checked on maintenance work performed on the trucks, and he checked to see that the clocks in the tractors were not running when the drivers were off work. He saw that the tarps and oil drums of respondent were adequately protected. Another of his duties was to make sure that when the loading was completed the drivers would leave on schedule; he also frequently located drivers when needed. None of these activities were duties which Mr. Hampton was to perform for Glass Containers Corp. It was for this work as a dispatcher that the payments of \$50 every two weeks were made by Clawson Trucking Co., Inc. to H.L.H. Trucking Co., a concern owned by Mr. Hampton.

In Cascade Refrigerated Lines, Inc. (Decision No. 66482, Case No. 7386), we have held that commissions paid by a carrier to an employee of a shipper for the purpose of securing the shipper's business may be unlawful even though the shipper does not know of the payments and receives no benefit from them. (See Pub. Util. Code sec. 3667 and 3670; U. S. v. Braverman, 10 L.ed.2d 444.) Even so, the statute does not prohibit all transactions between a carrier and such employees (Cf. Kerr v. Southwestern Lumber Co. [CCA Tex. 1935], 78 Fed.2d 348, 350, cert.den.296 U.S. 611.) In the Cascade case it was conceded that the commissions were paid in secret to induce the employee to select the carrier to transport his employer's shipments; no suggestion was made that the payments were in exchange for any legitimate service or that they were otherwise proper. Here, however, the payments were reasonable compensation for services rendered for the carrier, services which were outside the scope of Mr. Hampton's employment by the shipper. Moreover, the record fails

to show that the carrier thereby received any advantage with respect to his arrangements with the shipper. Instead, the evidence established that several years before the period in question, respondent had been designated by the shipper to perform all the transportation here involved; other carriers could be used only on infrequent occasions when respondent did not have sufficient equipment available. These arrangements were part of the shipper's general practice for its various plants throughout the State; carriers were selected at the head office and even plant managers were without authority to substitute other carriers. On this record we cannot find that respondent's payments to Mr. Hampton were made to secure business from the shipper or were designed to provide the shipper with transportation at less than the lawful rates.

Although this investigation will be discontinued, it by no means follows that it was improvidently instituted. Quite the contrary, whenever we learn of any payment by a carrier to an employee of a shipper, a most thorough inquiry will be conducted. Such payments are inherently suspicious, and the carrier making them must be prepared to demonstrate affirmatively that they are legitimate.

O R D E R

IT IS ORDERED that the Commission investigation herein is discontinued.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 27th day of December, 1963.

William L. Bennett
President

Wendell H. King

George D. Hoover

Fredrick B. Hallock

Commissioners