

Decision No. 66585**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of PLYWOOD)
 TRUCKING COMPANY, INC., doing)
 business as GENERAL FREIGHT)
 CORPORATION, a California)
 corporation.)

Case No. 7080

Marvin Handler, for General Freight Corporation,
 respondent, and for Hamp L. Hampton, interested
 party.

Delbert A. Thomas, for Glass Containers Corporation,
 interested party.

Elinore Charles, for the Commission staff.

O P I N I O N

On March 21, 1961, the Commission issued its order instituting investigation into the operations, rates and practices of Plywood Trucking Company, Inc., doing business as General Freight Corporation, a California corporation, which is engaged in the business of transporting property over the public highway as a radial highway common carrier, a highway contract carrier, and city carrier, for the purpose of determining whether respondent has violated Section 3667 of the Public Utilities Code by the payment of commissions to Howard Burg and Hamp L. Hampton, employees of Glass Containers Corp., a shipper.

Public hearing in this matter was held before Examiner Porter at San Francisco on June 12 and 13, 1961. At the close of the second day of hearing the matter was taken under submission.

It was stipulated that respondent, Plywood Trucking Company, Inc., doing business as General Freight Corporation, has been issued Radial Highway Common Carrier Permit No. 19-48265, Highway Contract Carrier Permit No. 1-9282, and City Carrier Permit No. 19-52423, and has been served with Minimum Rate Tariff No. 2 and supplements thereto, and Distance Table No. 4.

This case is similar to Case No. 7082 (Clawson Trucking Co., Inc.), in which Decision No. 66535 ^{was} ~~has been~~ issued ^{December 27, 1963.} ~~this date~~ *DEM*

It involves the same shipper (Glass Containers Corp.) and the same shipper employee (Hamp L. Hampton), but there is a different carrier here and an additional shipper employee (Howard Burg).

As we pointed out in the Clawson case (Decision No. 66535), payments by a carrier to an employee of a shipper need not be received by, or even known to, the shipper in order to constitute unlawful rebates, allowances or commissions; but such payments may nevertheless be lawful if they are for a legitimate purpose and if they do not affect the transportation arrangements between shipper and carrier or the compensation for such transportation. In each such case a question of fact is presented as to the purpose and effect of the payments. Here, as in the Clawson case, we are unable to find that the payments were unlawful.

As in the Clawson case, the central fact established by the evidence is that neither Mr. Hampton nor Mr. Burg was in a position to select respondent as a carrier for Glass Containers Corp. Mr. Burg was warehouse and shipping supervisor at the Vernon plant and Mr. Hampton at the Antioch plant. For each plant, however, respondent had been selected by the shipper's headquarters personnel in Fullerton to handle the shipments in question except

shipments moving in trucks supplied or designated by a customer. The staff contends that these two employees could affect the amount of business handled by respondent through their authority to determine whether or not his equipment was satisfactory for a given shipment and therefore whether or not some other carrier should be substituted; there was much evidence on this point. The record, taken as a whole, will not support the staff theory. The testimony of the staff's own witnesses (the general factory manager and the Antioch plant manager) discounted this possibility. Moreover, respondent's relationship with this shipper included other extensive warehousing and distribution activities, and it is hardly possible that respondent needed the aid of these two men to obtain the traffic which the shipper had promised; if these employees had sought to substitute other carriers when respondent's equipment was in fact adequate, respondent was in a position to complain directly and effectively to the shipper's headquarters personnel. On the other hand, if respondent's equipment had been used when in fact it was not able to carry the freight without damage or delay, the shipper's customers would have complained with similar effectiveness; the evidence showed that such complaints would be particularly likely because of the fragile character of the glass containers shipped and the critical deadlines of those who purchased them.

The inability of either employee to control the amount of freight carried by respondent is all the more important here because of the uncertainty which would otherwise surround the payments by respondent to Mr. Burg. Over a period of several months a total of \$1,100 was paid. It was testified that the transaction was merely a loan to a business acquaintance and friend to assist in the purchase of a car, and the initial payment of \$400 was proved to have been used as a down payment for a car. However, the loan was

not reduced to writing until after this investigation was begun, and we could hardly accept the explanation given if it had been shown that respondent was in a position to gain through the transaction any transportation advantage with respect to this shipper.

As in the Clawson case, the payments to Mr. Hampton were sufficiently explained. His duties for respondent included securing loads of glass on trucks and teaching drivers how to load glass properly. The work was done late at night, after his duties for the shipper were completed, and it was outside the scope of his employment by the shipper. These arrangements with respondent arose from respondent's need for proper loading of the glass, a task involving special skill and experience. The evidence indicates that several months before the Commission staff's investigation was begun, the drivers had become sufficiently familiar with this work and Mr. Hampton's employment by respondent was terminated. His compensation appears to have been reasonable. When respondent used subhaulers, they were charged for their proportionate share of the payments to Mr. Hampton.

We repeat the warning issued in the Clawson case: any payment by a carrier to a shipper or to the shipper's employees is inherently suspicious and will be thoroughly investigated. There is insufficient evidence here, however, that the payments by respondent were to secure an advantage with the shipper. We are unable to find that unlawful commissions have been paid, and we therefore conclude that the investigation should be discontinued.

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 17th day of JANUARY, 1964.

John E. Mitchell President

*I dissent
Everett C. McKeage*

George L. Brewer

Fredrick B. Halloff
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

I dissent.
Everett C. McKeage, Commissioner