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Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of UNITED CALIFORNIA
EXPRESS & STORAGE CO., a California
corporation, doing business as
U.C. Cotton Compress & Warehouse Co.
(formerly as White Portable Compress
Company, Division of United Califor-
nia Express & Storage Co.), for
formal waiver of undercharges.

Application No. 44885
(Filed October 23, 1962)

O P I N I O N

Applicant is a warehouseman engaged in the business of storing and handling of cotton and cotton linters in bales at Oakland, California. It seeks an order authorizing the waiver of certain undercharges arising out of transportation of cotton by Yandell Truckaway, Inc., from applicant's warehouse located at 900 Terminal Street, Oakland, to Encinal Terminal, Alameda, and to Roward Terminal, Oakland. Yandell joined in the application.

A public hearing was scheduled for June 27, 1963, before Examiner Thompson, at San Francisco. Two days prior to the hearing applicant and the Commission staff agreed to waive public hearing and to submit the matter on an agreed statement of facts and on briefs. The hearing was called and adjourned without receipt of evidence.^{1/} The agreed statement of facts was filed September 10, 1963 and briefs were received November 12, 1963.

According to the stipulation of the parties, during the first half of 1960 the major source of applicant's cotton storage and compressing business was a number of brokers doing business in the San Joaquin Valley. The cotton was ginned in the Fresno area

^{1/} No parties attended the hearing. Applicant and the staff were excused.

and was shipped by the broker to applicant for the purpose of compressing the bales prior to shipment to foreign or out-of-state destinations in order to reduce the bulk of the bales and thereby provide lower shipping costs in connection with transportation by vessel. The brokers had full control of the cotton until it was delivered to the vessels or, in some cases, until it was delivered at the foreign or out-of-state destinations. In its business with the brokers, applicant engaged for-hire carriers to transport the compressed cotton from its warehouse to the docks. It paid the truckers and then billed the broker for those charges together with its charges for warehousing and compressing services.

During the period February 26, 1960 through May 25, 1960, applicant engaged Yandell to transport cotton to docks at Oakland and Alameda at a rate of 45 cents per bale (\$1.80 per ton) and to Richmond and San Francisco at 75 cents per bale (\$3 per ton). Transportation was performed by Yandell to said docks at the agreed rates. At that time the Commission had established minimum rates for the transportation of cotton between points in the City of Oakland and between Oakland and Alameda. Said rates were set forth in City Carriers' Tariff No. 2-A, Highway Carriers' Tariff No. 1-A and amounted to approximately \$2.75 per ton.^{2/} The rates assessed by Yandell on shipments to Howard Terminal and to Encinal Terminal were approximately 95 cents per ton lower than those prescribed by the Commission. During the aforementioned period Yandell transported eight shipments from applicant's warehouse to said terminals. It also transported a number of shipments to Richmond and to San Francisco; however, the Commission has not established minimum

^{2/} The applicable charges are computed at the following rates: Transportation at 85 cents per ton plus \$1.79 per ton for unloading plus 6 percent surcharge.

rates for the transportation of cotton from Oakland to said points (Item 40 of Minimum Rate Tariff No. 2).

The Transportation Division of the Commission discovered the undercharges and on or about September 23, 1960 directed Yandell to review its billings for transportation performed for applicant and to collect, and if necessary to take legal action to collect, all undercharges disclosed by that review. Pursuant to that staff directive Yandell reviewed its records and submitted balance-due bills to applicant for undercharges totaling \$603.24. Applicant has not paid the undercharges and has filed this application requesting that they be waived.

The Commission 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. These matters were extensively briefed by applicant and the staff, but there appears to be no reason to consider them since the stipulated facts indicate that the matter herein is now moot. The stipulation recites that applicant engaged Yandell, among others, to perform the transportation at a mutually agreed rate. It is indicated that the agreement was not reduced to writing. Keeping in mind that applicant contends that the Commission is without jurisdiction to regulate the transportation of agricultural products in interstate or foreign commerce, and hence, in effect, denies that there are undercharges, if as suggested by the staff the application is dismissed for failure to state a cause of action the only possible result would be that Yandell still would be confronted by the directive in the staff letter of September 23, 1960 to file an action in court to collect the undercharges. In that event applicant has a valid defense

in that the statute of limitations has run (Church v. Pub. Util. Comm., 51 C 2d 399). Legal action by Yandell would not change the present situation. A granting of the authority also would not change anything. At most, all that it would do would be to relieve Yandell from prosecuting its claim and, as indicated above, the statute of limitations has run with respect to said claim.^{3/} It is readily apparent, therefore, that either a granting or a denial of this application will result in the same thing, to wit, the continuance of the present situation. We conclude, therefore, that the application should be dismissed.

Yandell joined in this application. The staff directive to it to prosecute its claim for undercharges is outstanding. It is idle to require the carrier to take legal action against the shipper. We conclude that the staff directive contained in the letter of September 23, 1960 should be rescinded.

O R D E R

IT IS ORDERED that:

1. The application of United California Express & Storage Co., a corporation, doing business as U. C. Cotton Compress & Warehouse Co., for an order authorizing Yandell Truckaway, Inc., to waive collection of undercharges in the amount of \$603.24 is dismissed.

^{3/} It is proper to point out that the Commission held this application in abeyance for a year because it involved questions of law which were before the Commission in Application No. 43526 of Security Truck Lines, decided September 3, 1963 by Decision No. 65958; however, the application herein was filed over two years after the transportation was performed so that the same result would have been reached if this matter had been decided on the date the application was filed.

2. The directive by the staff contained in a letter, dated September 23, 1960 to Yandell Truckaway, Inc., to take legal action to collect undercharges arising from charging United California Express & Storage Co., a corporation, doing business as U. C. Cotton Compress & Warehouse Co. less than the applicable minimum rates is rescinded.

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

Dated at San Francisco, California, this 21st day of January, 1964.

William L. Bennett
President

George H. Grover

Fredrick B. Holbrook
Commissioners