

65823

Decision No. _____

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, rates, charges and contracts of CONTAINER TRANSPORT COMPANY, a corporation; GEORGE W. GATES; H. W. McCLAIN; RAUL P. LARRAZOLA, doing business as RAUL'S TRUCKING SERVICE; and MILES MOTOR TRANSPORTATION SYSTEM, a corporation.

Case No. 7376

Brobeck, Phleger & Harrison, by Robert N. Lowry,
for Container Transport Company, respondent.
William C. Bricca and Charles P. Barrett, for
the Commission staff.

O P I N I O N

On June 15, 1962, the Commission instituted its investigation into the operations, practices, rates, charges and contracts of Container Transport Company; George W. Gates; H. W. McClain; Raul P. Larrazola, doing business as Raul's Trucking Service; and Miles Motor Transportation System.

The purpose of this investigation is to determine:

1. Whether Container Transport Company is a device whereby transportation of property within this State is performed for any shipper at rates less than those prescribed in Minimum Rate Tariff No. 2.
2. Whether respondents Gates, McClain, Larrazola and Miles Motor Transportation System while acting as subhaulers for respondent Container Transport Company have in fact transported property for Fibreboard Paper Products Corporation at rates less than those prescribed in Minimum Rate Tariff No. 2.

Public hearing was held before Examiner Porter on November 28 and 29, 1962, at Los Angeles, on which latter date the matter was submitted subject to the filing of briefs and the staff motion to amend the order instituting investigation to include transportation performed under Minimum Rate Tariff No. 5.

By order dated April 23, 1963, the Commission set aside the submission of this matter, amended the scope of the investigation to include transportation subject to Minimum Rate Tariff No. 5, and set the matter for further hearing at a time and place to be thereafter designated.

On June 11, 1963, respondent Container Transport Company filed a Motion for Receipt of Verified Statement and Exhibits in lieu of further hearing. The granting of this motion was requested in view of the limited purpose for which the matter was reopened, the expense of a further hearing and the difficulty of fixing a hearing date mutually convenient for participating counsel. Also it was requested that oral argument before the Commission en banc be granted.

The motion for receipt of verified statement and exhibits in lieu of further hearing will be granted. The motion for oral argument before the Commission en banc will be denied. The matter is now ready for decision.

The issued presented in this matter is whether a carrier subject to this Commission's jurisdiction which is the wholly owned subsidiary of its principal shipper can lawfully pay to subhaulers less than the minimum rates when said subhauler transports the property of said principal shipper.

The material facts in this matter are not in dispute.

Container Transport Company is a California corporation organized in 1945 and operating under the jurisdiction of this Commission as a permitted carrier. Said corporation is the holder of the following permits issued by this Commission: Contract Carrier Permit No. 19-22357, Radial Carrier Permit No. 19-41634 and City Carrier Permit No. 19-38957. It is the wholly owned subsidiary of Fibreboard Paper Products Corporation. Prior to the organization of Container Transport Company the various divisions of Fibreboard Paper Products Corporation operated a proprietary fleet of trucks. After a study, Fibreboard Paper Products Corporation's management concluded that its trucking operations could be more economically and efficiently operated as a single fleet with central dispatching and separate management.

The respondents George W. Gates, H. W. McClain and Raul P. Larrazola, doing business as Raul's Trucking Service, and Miles Motor Transportation System are the holders of permits issued by this Commission.

The evidence shows that all of the officers of Container Transport Company are also officers of Fibreboard Paper Products Corporation with the exception of R. A. Morin who is a vice president of Container Transport Company and a director of traffic for Fibreboard Paper Products Corporation. Container Transport Company has its own equipment, terminal and employees. Its terminal located in the City of Vernon is leased from Fibreboard Paper Products Corporation. In addition to the resident manager, who has direction of the operations of the company, Container Transport Company has 29 full time employees. None of these employees work for or receive any compensation from Fibreboard Paper Products Corporation. High level policy matters, such as the budget, sales

estimates, capital expenditure programs, purchasing of new equipment and area expansion, are under the direction of the officers and directors of Fibreboard Paper Products Corporation. The subsidiary is self-governing, except as to matters of policy, at the sufferance of the parent company. Its equipment consists of approximately 21 tractors and 37 semi-trailers to which it holds title.

Container Transport Company hauls daily for Fibreboard Paper Products Corporation's eight subsidiary plants located in the Los Angeles area and also handles some shipments for a former affiliate of Fibreboard Paper Products Corporation, Glass Container Corporation. It has employed a total of eight subhaulers, including respondents Gates, McClain, Larrazola and Miles Motor Transport. The revenues from subhailed traffic were approximately ten percent or less of Container Transport Company's total revenues on all intrastate traffic. Subhaulers were used to meet temporary requirements for additional carrying capacity. Container Transport Company billed and received from Fibreboard Paper Products Corporation the full minimum rate and paid to the subhaulers amounts ranging from 90 percent to 100 percent of the minimum rate. The percentages retained varied with each subhauler's contract, and in some cases varied during the course of employment of a single subhauler.

With respect to Container Transport Company's retention of a portion of the charge when subhaulers were used, the evidence shows that consideration was given to costs incurred by the corporation in employing subhaulers, such as the Board of Equalization tax and Public Utilities Commission fee, the services of dispatching, billing and rating, and overhead expenses; also consideration was given to the level of the rates applicable to subhaul traffic. If the level of the rates was such that the subhauler could not provide adequate

service if Container Transport Company were to make the deduction which its services would warrant, then the retention was reduced or waived entirely. The manager of Container Transport Company testified that one of the subhaulers required a great deal more supervision than others used by Container Transport Company as his dispatching and billing services were poor; that Container Transport Company initially retained from the amounts paid to this subhauler 10 percent of the revenue plus amounts to cover the Board of Equalization tax and Public Utilities Commission fee, and later the retentions were reduced to 5 percent in recognition of the fact that this subhauler was not making enough money on the traffic to make it attractive to him at a time when the corporation was having difficulty in securing subhaulers to handle the traffic; that no retention was made to defray the costs of subhaul in the case of certain other subhaulers because the type of loads carried by them made it financially impossible for them to give the corporation a five or ten percent retention. ✓

The evidence further shows that for the 10 percent retention made by Container Transport Company from the amounts paid to another subhauler, such subhauler was relieved of the necessity of rating and extending freight bills, and computing the Board of Equalization tax and Public Utilities Commission fee. ✓

The evidence clearly establishes that the percent level of retention was not based on the actual cost of the services rendered, but on judgment considerations of such variables as type of load, availability of carriers and bargaining powers.

The fact that Fibreboard Paper Products Corporation at all times paid the lawful minimum rates to its subsidiary, Container Transport Company, is of no consequence because as the sole stockholder thereof it stands in a position ultimately to get the benefit

of any reduced rate transportation. Nor is it necessary to find that moneys were actually remitted to the parent company, either in the form of payments representing the difference between amounts paid to its subsidiary and what the subsidiary paid to the sub-haulers, or in the form of dividends, distribution of capital on dissolution, or otherwise. It appears clear that to the extent that Container Transport Company paid less than the minimum rates to the subhaulers, it thereby reduced its expenses and increased its income, which increased income ultimately inures to the benefit of its sole stockholder, Fibreboard Paper Products Corporation, the shipper in this case. By reason of the foregoing, Fibreboard Paper Products Corporation benefits, notwithstanding that Container Transport Company's profit or surplus remains undistributed.

Based upon a consideration of the evidence, the Commission is persuaded that there exists such a unity of ownership, interest and control between Fibreboard Paper Products Corporation as shipper and respondent Container Transport Company as a permitted highway carrier as to make such an intercorporate arrangement a device by means of which the Public Utilities Code was violated.

The Commission finds that:

1. Respondent Container Transport Company is the holder of Contract Carrier Permit No. 19-22357, Radial Carrier Permit No. 19-41634 and City Carrier Permit No. 19-38957; respondents George W. Gates, H. W. McClain, Raul P. Larrazola and Miles Motor Transportation Company hold permits authorizing them to transport property over the public highways for compensation.

2. Container Transport Company is a corporation organized and existing pursuant to the laws of the State of California, and is a wholly owned subsidiary of Fibreboard Paper Products Corporation.

3. Container Transport Company engaged other permitted highway carriers as subhaulers to transport property of Fibreboard Paper Products Corporation within this State, to whom it paid less than the minimum rates prescribed by Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 5.

4. For the purpose of this proceeding, there is such a unity of ownership and control between Fibreboard Paper Products Corporation and Container Transport Company as to warrant disregard of Container Transport Company as a separate corporate entity. The subhaulers employed to transport property of Fibreboard Paper Products Corporation were in fact prime carriers who received less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 5.

By reason of the foregoing, the Commission concludes that Fibreboard Paper Products Company has obtained, in violation of Section 3668 of the Public Utilities Code, transportation between points in this State at rates less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 5.

O R D E R

IT IS ORDERED that:

1. Container Transport Company, on or before the twentieth day after the effective date of this order, shall pay to this Commission a fine of \$500 and shall cease and desist from permitting Fibreboard Paper Products Corporation from obtaining transportation of property between points within this State at rates less than the minimum rates established by the Commission.

2. Container Transport Company shall review its records of all transportation performed for Fibreboard Paper Products Corporation wherein purported subhaulers were used to perform the actual

transportation between March 1, 1961, and the effective date of this order. Container Transport Company shall then pay to such furnishers of transportation the difference between the lawful minimum rate and charge applicable to such transportation and the amount previously paid to such furnishers of transportation ostensibly as subhaulers.

3. George W. Gates, H. W. McClain, Raul P. Larrazola, doing business as Raul's Trucking Service and Miles Motor Transportation System, a corporation, shall review their records relating to all transportation wherein they were engaged by Container Transport Company to transport property in behalf of Fibreboard Paper Products Corporation between March 1, 1961, and the effective date of this order for the purpose of ascertaining the lawful minimum rates for such transportation and shall take such action, including legal action, as may be necessary to collect the difference between the lawful minimum rates and the amounts they received for such transportation.

4. Within ninety days after the effective date of this order, respondents shall complete the examination of their records required by paragraphs 2 and 3 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to such examination.

5. In the event charges to be collected as provided by paragraph 4 of this order, or any part thereof, remain uncollected one hundred and twenty days after the effective date of this order, George W. Gates, H. W. McClain, Raul P. Larrazola and Miles Motor Transportation System shall institute legal proceedings to effect collection and shall submit to the Commission on the first Monday of each month a report of the charges remaining to be collected and

specifying the action taken to collect such charges and the result of such, until such charges have been collected in full or until further order of this Commission.

6. On the effective date of this decision the Secretary of this Commission is directed to cause to be amended Contract Carrier Permit No. 19-22357, Radial Carrier Permit No. 19-41634 and City Carrier Permit No. 19-38957 issued to Container Transport Company by prohibiting Container Transport Company whenever it engages other carriers in connection with the transportation of property for Fibreboard Paper Products Corporation or of its customers or suppliers, from paying such other carriers less than the applicable minimum rates established by the Commission.

7. Container Transport Company's motion for receipt of verified statement and exhibits in lieu of further hearing is granted, and its motion for oral argument before the Commission en banc is denied.

The Secretary of the Commission is directed to cause personal service of this order to be made upon each respondent. The effective date of this order as to each respondent shall be twenty days after the completion of such service upon such respondent.

Dated at San Francisco, California, this 18th day of FEBRUARY, 1964.

William L. Bennett
President
Walter A. L. ...
George E. Crover
Fredrick B. Haloboff
Commissioners

I dissent. Because of the uncertainty of the so-called alter ego concept and the particular facts in this case I would grant the request for oral argument.
Edwin H. ...