

66302

ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Case No. 7755

B. E. Dalrymple, for Dalrymple Trucking Co.,  
respondent.  
B. A. Peeters, for the Commission staff.

O P I N I O N

By its order dated October 29, 1963, the Commission issued its order instituting an investigation into the operations, rates and practices of Dalrymple Trucking Co., a California corporation.

A public hearing was held before Examiner Gravelle on January 8, 1964, at Fresno.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 54-3485. Respondent has a terminal in Fresno, California. It owns and operates twenty-eight units of power equipment and forty-five units of trailer equipment. Its total gross revenue for the year ending September 30, 1963 was \$543,442. Copies of appropriate tariff and distance tables were served upon respondent.

On June 27 and 28, 1963 and again on July 1, 5 and 8, 1963 a representative of the Commission's field section visited respondent's place of business and checked its records for the period of September 1960 through June 15, 1963, inclusive. A more specific examination was made for the period June 1 to June 15, 1963.

The testimony of the field section representative disclosed that respondent is engaged primarily in the hauling of exempt commodities, cotton and fruit, which constitute 63 percent of its gross revenue, 2 percent of its gross revenue is attributable to various nonexempt commodities and the balance of 35 percent involves the carriage of hay. It is the hay hauling that is the subject matter of the Commission investigation. In the summer of 1960 a shipper, Koster Hay Co., contacted respondent's president, B. E. Dalrymple, who was at that time operating as an individual, seeking four or five trucks to transport hay for them. Respondent supplied the equipment and provided the requested service. Koster Hay Co. through its partners Jan Koster and Aart P. Koster held permits issued by this Commission to operate as both a radial highway common carrier and a highway contract carrier. In September of 1960 the Kosters approached respondent's president offering to sell him twenty pieces of operating equipment for \$200,000. Respondent's president in return was to do all of the Koster Hay Co.'s hay hauling and was to be guaranteed a tender of 20,000 tons of hay per year for carriage. Two contracts reflecting this arrangement were entered into between B. E. Dalrymple and the Kosters on September 16, 1960, one a conditional sales contract (Exhibit No. 2) and the other a contract for hauling (Exhibit No. 3). The Kosters retained no operating equipment and provided in the contract for hauling that the amount to be paid B. E. Dalrymple would be not in excess of Public Utilities Commission rates minus a 10 percent subhauler's fee as well as \$1.50 per ton to be applied against payment for the equipment purchased by Dalrymple. Both of the above contracts were prepared by an attorney representing the Kosters. On November 16, 1961, B. E. Dalrymple, the individual, transferred and assigned with the approval of the Kosters both the conditional sales contract and the contract for hauling to the corporate respondent herein.

Exhibit No. 4 is a statement and attachments issued to respondent by Koster Trucking Company for the period July 1, 1961 to July 17, 1961. It indicates the tonnage hauled during said period and the charge therefor. Deducted from said charge is the 10 percent subhauling fee, the \$1.50 per ton charge for equipment payment, interest on the balance due on the purchase of equipment as provided in the conditional sales contract and a charge for unloading. The unloading charge covered payment for use of a man supplied by the Koster to aid Mr. Dalrymple's driver in this function.

Exhibit No. 5 is a copy of a letter from Koster Hay Co. dated January 19, 1961 informing Mr. Dalrymple that Henry B. Koster, doing business as Koster Trucking Company, would thereafter serve the function previously performed by Koster Hay Co. as to subhauling and hauling from place to place as well as administration, bookkeeping and accounting for such hauling.

Exhibit No. 6 is a photostatic copy of a letter in the files of the Commission addressed to Koster Trucking Company, dated July 7, 1961 and signed by Rolla J. Weiser, Assistant Secretary, which refers to the permits held by Aart P. Koster and Jan Koster, their transfer to Henry B. Koster as of February 1, 1961, the possibility that the arrangement with B. E. Dalrymple is a device to circumvent minimum rates and informing Henry B. Koster of a restriction inserted in his permits to the effect that whenever he engages other carriers to transport the property of Aart P. Koster and Jan Koster, doing business as Koster Hay Co., or their customers such other carriers must be paid the full minimum rates established by the Commission.

Exhibit No. 7 is a recapitulation of freight charges with attachments dated August 7, 1961 from Koster Hay Co. to B. E. Dalrymple covering the period July 17, 1961 to July 31, 1961 showing

gross transportation charges for said period. Deducted therefrom are charges for loading and unloading, the \$1.50 per ton for equipment payment, the interest charge, a charge for utilities, and a charge for taxes. Exhibit No. 7 also contains a statement from Koster Hay Co. to B. E. Dalrymple Trucking for August 1961 and dated September 15, 1961. In addition to the other deductions from the gross transportation charge previously mentioned this latter statement shows a deduction for "Rent Terminal" and "Dispatcher" for the months of July and August. One of the attachments to the statement in Exhibit No. 7 shows a calculation as follows:

$$\begin{array}{r} \$5,795.95 \\ \quad \quad \quad 8\% \\ \hline \$ 463.68 \end{array}$$

The sum of \$5,795.95 is the gross transportation charge for the July 17 to July 31 period. The "Rent Terminal" charge for July is shown as \$250 and the "Dispatcher" charge for July is \$213.67, the sum of these latter figures being \$463.67. The August statement dated September 15, 1961 shows a gross transportation charge of \$4,653.74. The "Rent Terminal" charge for August is shown as \$200 and "Dispatcher" charge for August is shown as \$172.28. The sum of these two figures is \$372.28. The field section witness who had procured these documents from respondent's files testified that 8 percent of the gross transportation figure shown for August would be \$372.28.

Exhibit No. 8 is a compilation of statements issued by Koster Hay Co. to respondent for the period September 1, 1961 to June 1, 1963. Each of these statements contain the deductions from gross transportation charges previously mentioned and including a deduction for "Rent Terminal" and "Dispatcher". The witness testified that from September 1, 1961 to May 1, 1962, the sum of these two deductions is equivalent to 8 percent of the gross transportation

charges on each statement. He further testified that from May 1, 1962 to June 1, 1963 the "Rent Terminal" deduction alone is 8 percent of the gross transportation charge and the "Dispatcher" charge is equivalent to \$.50 per ton on the total tonnage transported, while instead of a deduction of \$1.50 per ton for equipment payment only \$1.00 per ton is deducted. The witness testified that respondent's president admitted to him that this change in billing occurred at the insistence of the Kosters due to their alleged inability to make a profit on the sale of the hay transported by respondent. The total sum of deductions for "Rent Terminal" and "Dispatcher" charges reflected by Exhibit No. 8 is \$36,386.32.

Exhibit No. 1 consists of the freight bills issued by respondent to Koster Hay Co. for the period June 1, 1963 to June 15, 1963 together with the statement and attachments covering the same period and issued by Koster Hay Co. to respondent. The gross transportation charge shown on this statement is \$28,374.43, the "Rent Terminal" deduction is \$2,269.95 and the "Dispatcher" deduction is \$1,846.04. The tonnage hauled according to the statement amounted to 3,692.08 tons. The witness testified that 8 percent of the gross transportation charge shown equalled \$2,269.95 or the exact amount of the "Rent Terminal" deduction and that the "Dispatcher" deduction was equivalent to \$.50 per ton on the 3,692.08 tons transported. The witness could find no evidence of any agreement for the payment of "Rent Terminal" between the respondent and the Kosters and testified that he could find no evidence of any "Dispatcher" service provided by the Kosters. He did state that respondent maintained some fueling and repair facilities on the Koster premises in Chino, but that respondent's president had stated they were erected and maintained at the sole expense of respondent. The testimony of the witness and Exhibits Nos. 1 and 8 show that for the period September 1, 1961 through June 15, 1963 there has been a total deduction from the

gross transportation charges paid by Koster Hay Co. to respondent for "Rent Terminal" and "Dispatcher" in the sum of \$40,502.31. The witness testified that the reason, as stated to him by respondent's president, for the 2 percent difference between the original 10 percent subhaul fee deduction and the later 8 percent "Rent Terminal" and "Dispatcher" deduction was accounted for by California State Board of Equalization Tax and California State Public Utilities Commission Transportation Rate Fund Fees which together approximate 2 percent of gross transportation charges. Under the subhaul arrangement these obligations were met by the Kosters but subsequently when respondent was no longer a subhauler it bore the expense itself.

A transportation rate expert called as a witness on behalf of the Commission staff testified that due to insufficient documentation as to the precise points of origin and destination on the freight bills contained in Exhibit No. 1 he could not accurately determine the exact rate to be assessed for the transportation reflected thereby. He did state, however, that the rates indicated on the attachments to the Koster Hay Co. statement in Exhibit No. 1 were the correct rates for the mileages shown thereon. It was the further testimony of the rate expert that neither Minimum Rate Tariff No. 2 or Minimum Rate Tariff No. 14 which applied to the transportation herein involved nor any items therein made any provision for offsetting charges to the gross applicable transportation charge.

B. E. Dalrymple, respondent's president, testified on behalf of respondent. He stated that he was respondent's president, that his wife, Olean Dalrymple, was its vice president and his niece, Evelyn Anderson, its secretary. His testimony for the most part confirmed what had been previously entered in the record by

the field section representative and through Exhibits Nos. 1 through 8 as to the initial contact between him and the Kosters, his purchase of equipment from them, the contract of hauling and the various modifications thereof. He testified that all the rating and billing was done by the Kosters' bookkeeper, a normal procedure in a legitimate subhauling situation, that they did not perform any dispatch service for respondent, that respondent had no agreement with them written or otherwise for the payment of rent and that 8 percent of the gross transportation charge was not a reasonable sum for rent. It appeared from his testimony that respondent acting through its president felt constrained to accede to any demand made upon respondent by the Kosters because of the large sum of money owed them by respondent for the purchase of equipment. According to Exhibit No. 1 the balance due on June 15, 1963 was \$104,200. B. E. Dalrymple has been operating as a permit carrier in this state since 1949. The instant proceeding is the first disciplinary action taken against him or respondent by this Commission during that fifteen-year period.

In his closing statement staff counsel recommended that respondent be ordered to collect the amount rebated to the Koster Hay Co. as terminal rent and dispatch service from September 1960 to the present, to cease and desist from allowing offsets to its transportation charges, to audit its freight bills and collect any undercharges found and that a maximum fine be imposed. He pointed out in fairness to respondent that respondent through its president had originally entered into the hauling contract and subhaul arrangement in good faith, that there had been no previous history of violation of the Commission order, and that B. E. Dalrymple had been extremely cooperative with the staff in the conduct of its investigation herein.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 54-3485.
2. Respondent was served with appropriate tariffs and distance tables.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibits Nos. 1 and 8 by rebating to Jan Koster and Aart P. Koster, doing business as Koster Hay Co., those amounts labelled "Rent Terminal" and "Dispatcher" therein.
4. Respondent assisted and permitted Jan Koster and Aart P. Koster, doing business as Koster Hay Co., to obtain transportation of property between points within California at less than the lawfully prescribed minimum rate in the instances as set forth in Exhibits Nos. 1 and 8 by rebating to Jan Koster and Aart P. Koster, doing business as Koster Hay Co., those amounts labelled "Rent Terminal" and "Dispatcher" therein.
5. The amount of the undercharges and rebates mentioned in findings Nos. 3 and 4 above is \$40,502.31 for the period September 1, 1961 through June 15, 1963.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3667 and 3668 of the Public Utilities Code.

The order which follows will direct respondent to review his records to ascertain all undercharges and rebates that have occurred since September 1, 1961 in addition to those set forth herein. The Commission expects that when undercharges and rebates



have been ascertained, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent and the results thereof. If there is reason to believe that respondent, or its attorney, has not been diligent, or has not taken all reasonable measures to collect all undercharges and rebates, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Respondent shall examine its records for the period from September 1, 1961 to the present time, for the purpose of ascertaining all undercharges and rebates that have occurred.

2. Within ninety days after the effective date of this order, respondent shall complete the examination of its records required by paragraph 1 of this order and shall file with the Commission a report setting forth all undercharges and rebates found pursuant to that examination.

3. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges and rebates set forth herein, together with those found after the examination required by paragraph 1 of this order, and shall notify the Commission in writing upon the consummation of such collections.

4. In the event undercharges and rebates ordered to be collected by paragraph 3 of this order, or any part of such undercharges and rebates, remain uncollected one hundred twenty days after the effective date of this order, respondent shall institute legal proceedings to effect collection and shall file with the Commission,

on the first Monday of each month thereafter, a report of the undercharges and rebates remaining to be collected and specifying the action taken to collect such undercharges and rebates, and the result of such action, until such undercharges and rebates have been collected in full or until further order of the Commission.

5. Respondent shall pay a fine of \$5,000 to this Commission on or before the twentieth day after the effective date of this order.

6. Respondent shall cease and desist from continuing the practice of permitting offsetting charges to be made against its transportation charges as well as allowing shippers to obtain transportation at less than the applicable minimum rates.

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 Los Angeles, California, this 3rd day of MARCH, 1964.

\_\_\_\_\_  
 President  
*Charles H. Gray*  
 \_\_\_\_\_  
*George H. Grover*  
 \_\_\_\_\_  
*Fredrick B. Hellogg*  
 \_\_\_\_\_  
 Commissioners

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

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.