

ORIGINAL

Decision No. 67390

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of POMONA TANK LINE, a California corporation.

Case No. 7597
(Filed April 23, 1963)

C. George Deukmejian, for Pomona Tank Line,
respondent.
Elinore Charles, for the Commission staff.

O P I N I O N

On April 23, 1963, the Commission instituted its investigation into the operations, rates and practices of Pomona Tank Line, a corporation (hereinafter referred to as respondent), for the purpose of determining (1) whether respondent has violated Section 494 of the Public Utilities Code by charging, demanding, collecting or receiving a different compensation for the transportation of property than the applicable charges specified in its tariff, namely, Western Motor Tariff Bureau, Inc. Local Freight and Express Tariff 3-D and (2) whether respondent has violated Section 1062 of said code by failing to have a proper bond on file with the Commission in compliance with General Order No. 84-C. ✓

A public hearing having been held in Los Angeles on November 20 and 21, 1963, before Examiner Chiesa, and oral and documentary evidence having been adduced, the matter was submitted for decision. ✓

The evidence shows that:

Respondent is operating as a "petroleum irregular route carrier" as defined in Section 214 of the Public Utilities Code, pursuant to a state-wide certificate granted by Decision No. 54038, dated November 5, 1956, in Application No. 38393.^{1/}

Respondent's principal place of business is 2421 Cerritos Avenue, Long Beach, California, where it maintains a terminal, shops and office, and employs approximately sixteen persons. Its equipment consists of twelve power vehicles and twelve trailers. Gross operating revenue for the four quarters ending September 30, 1963 was \$287,117. During the period pertinent to this investigation its principal shipper customer was Tidewater Oil Company.

An associate transportation representative testified that on September 5 and 6, 1962, he examined respondent's books and records, particularly its freight bills, transportation receipts, bills of lading, receipts for payment, and related books of account covering the period of June and July, 1962, and reported the information he obtained together with copies of certain records pertinent thereto. An associate transportation rate expert testified that she and said representative discussed and considered said information and that she analyzed same and prepared therefrom the data contained in Exhibit No. 3 of this proceeding.

During the months of June and July, 1962, respondent transported approximately 423 shipments. Thirty-eight shipments

^{1/} Respondent also holds Radial Highway Common Carrier Permit No. 19-49753 and City Carrier Permit No. 19-54954. However, its operations as such are not pertinent to this proceeding.

indicated violations of Item 600 of respondent's tariff. Twenty-two shipments were chosen for detailed analysis. Copies of respondent's shipping records and the staff's analyses of said shipments are shown in Exhibit 1 and in Parts 1 to 22 of Exhibit 3. The latter exhibit as corrected at the hearing, shows undercharges of \$650.97. The undercharges shown in Parts 7 and 14 of Exhibit 3 were corrected to read \$34.09 and \$39.25, respectively. Although there was conflicting testimony concerning other shipments as set forth in said exhibit, the amount of undercharges shown is correct.

In Parts 1, 3, 4, 5, 6, 8, 9, 10, 12, 15, 16, 17, 19, 20 and 21, the undercharges resulted from total time consumed in completing the tender in excess of the 24 consecutive hours as provided in Item 600 of respondent's tariff. In Parts 2, 7, 11, 14 and 18, the undercharges resulted from the loading of shipments after expiration of the 24-hour period, and the rating of said shipments separately. The undercharges pertaining to the shipment shown in Part 13 resulted from both time in excess of the 24-hour period and rating as separate shipments due to loading after expiration of the 24-hour period. The undercharge shown in Part 22 resulted from respondent's failure to collect a stop-in-transit charge.

The evidence also shows that respondent did not have on file with the Commission the C.O.D. bond required by G.O. No. 84-C until May 3, 1963 (Exhibit 6). No C.O.D. bond was on file during the period hereinabove mentioned. Respondent, however, did have in effect a "Blanket Position Bond" which insured respondent against loss sustained through any fraudulent or dishonest act committed by certain of its employees. Said bond is not the bond required by G.O. No. 84-C.

After the staff had presented its evidence respondent's counsel moved for a dismissal on the grounds of bias and prejudice against this respondent "if the basis for issuing this order instituting investigation by the Commission is the fact that there was a decision rendered against the respondent at some time in the past, ^{2/} together with another incident which we would refer to as the respondent having received an official notice but no decision ^{3/}.". Counsel contended that there was no justification for instituting this investigation when the irregularities, if any, were not in any way first called to the attention of the carrier by sending the usual undercharge letter which is sent to carriers under similar circumstances.

No evidence was presented by respondent showing this investigation was instituted because of bias or prejudice on the part of the Commission or any member of its staff nor because of Decision No. 63670 or the "admonition" notice of February 7, 1961. The motion for dismissal is therefore denied.

^{2/} Decision No. 63670, dated May 8, 1962, in Case No. 7217, in which the Commission found that respondent herein had violated certain safety provisions of General Order No. 99 and ordered respondent's operating authority suspended for five days or in the alternative that it pay a fine.

^{3/} This refers to Exhibit No. 2, an "admonition" letter, dated February 7, 1961, calling respondent's attention to violations of Item 150 of Minimum Rate Tariff No. 6. The evidence shows that this letter was mistakenly served on respondent as respondent was not conducting transportation services under said tariff; therefore, its provisions were not applicable.

Respondent contends that under Item 600 of the Western Motor Tariff Bureau Inc. Local Freight and Express Tariff 3-D^{4/} time consumed for mechanical breakdowns, driver shift changes, refueling, tire changes, unforeseen delays at loading and unloading points should not be charged against the period of 24 consecutive hours because said delays are not meant to be "transportation" as referred to in said item.

4/

Rates and Provisions

Item
No.600

The rates in this item apply for the transportation of gasoline and/or petroleum fuel oil distillate between points within the Los Angeles-Orange County Tank Truck Territory, and the Oakland-Bay Area Tank Truck Territory as hereinafter described, when performed subject to and in accordance with the provisions of Notes 1, 2, 3, 4, 5, 6 and 7.

The provisions of this item apply only when prior to the transportation of the property, the shipper has requested in writing that the transportation be performed under the provisions of this item and when the rate per unit of carrier's equipment per period of 24 consecutive hours is prepaid. (See Item No. 610).

Rate per unit of carrier's equipment per period of 24 consecutive hours ----- \$150.00.

Note 1: The rate herein provided applies for the transportation of 25,000 gallons of gasoline and/or petroleum fuel oil distillate or less by one unit of carrier's equipment within a period of 24 consecutive hours. When more than 25,000 gallons of gasoline and/or petroleum fuel oil distillate are tendered to, and are delivered by the carrier by one unit of equipment within said 24-hour period, an additional charge of \$.00088 per gallon shall apply to the quantity delivered in excess of 25,000 gallons. If, at the expiration of the 24-hour period, any portion of the quantity tendered during the period remains undelivered in the carrier's equipment, a charge of \$1.95 per one-quarter hour, or fraction thereof, shall apply for the time thereafter required to complete delivery of such portion. For the purposes of applying the provisions of this note time shall be computed from the time of arrival of carrier's equipment at first point of origin.

Note 2: As used in this item "Unit of Carrier's Equipment" means any power unit, tank trailer or tank semi-trailer (other than pressurized) or any combination of such highway vehicles operated together as a single unit. It also includes any of such vehicles used in the replacement of a unit of carrier's equipment, or a portion thereof, which has become inoperable while engaged in transportation under this item.

(Emphasis added. - Portion of Item 600 omitted).

The staff's contention is that Item 600 does not make any exception which would extend said 24-hour period, nor does any provision of Minimum Rate Tariff No. 6 provide for extension.

Staff's position is sound, otherwise there would be no way of limiting the period during which the transportation must be performed and every carrier and/or shipper could claim delays encountered for various reasons, whether justifiable or not. The period of performance would be entirely up to each individual carrier. Notes 1 and 2 of said Item 600 clearly indicate that time consumed in replacing a "unit of equipment" is chargeable to the 24-hour period.

The evidence shows that the undercharges set out in Exhibit No. 3, as corrected, resulted from a misinterpretation by the carrier and shipper of the wording of said Item 600, and that there was no intent to charge or collect a lesser rate than was applicable or to violate any of the provisions of the Public Utilities Code or respondent's tariff. Respondent performed many other similar transportation services during the same period of June and July, 1962, which were properly rated, some of which included excess time. Respondent also prepared billings for the undercharges shown in said exhibit but was advised by counsel not to present them pending the outcome of this proceeding. Several witnesses, experienced in transportation, testified in behalf of respondent that in their opinion the time lost by equipment breaking down, driver shift changes and other unavoidable delays is not considered chargeable time.

After consideration the Commission finds that:

1. Respondent operated as a "petroleum irregular route carrier" as defined in Section 214 of the Public Utilities Code.

2. Item 600 of Western Motor Tariff Bureau Inc., Local Freight and Express Tariff No. 3-D was applicable to the transportation of property as set forth in Parts 1 through 22 of Exhibits Nos. 1 and 3.

3. Respondent charged less than the applicable rates prescribed by Item 600 of said tariff, as set forth in Exhibit No. 3, which undercharges totaled \$650.97.

4. Respondent violated General Order No. 84-C by not having on file with this Commission a C.O.D. bond as required.

Based upon the foregoing findings of fact the Commission concludes that respondent has violated Sections 494 and 1062 of the Public Utilities Code and the Commission's General Order No. 84-C.

The order which follows will direct respondent to review its records to ascertain all undercharges and overcharges that have occurred since January 1, 1962, in addition to those set forth herein. The Commission expects that when undercharges or overcharges have been ascertained, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and refund the overcharges. 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 refund all overcharges, 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 January 1, 1962 to the present time, for the purpose of ascertaining all undercharges and overcharges 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 overcharges found pursuant to said examination.

3. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges 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 ordered to be collected by paragraph 3 of this order, or any part of such undercharges, 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 remaining to be collected and specifying the action taken to collect such undercharges, and the result of such action, until such undercharges have been collected in full or until further order of the Commission.

5. Respondent shall refund promptly all overcharges found after the examination required by paragraph 1 of this order, and

shall notify the Commission in writing upon the consummation of such remunerations.

6. Respondent shall cease and desist from charging and receiving a different compensation for transportation services rendered from the rates and charges applicable thereto as specified in the tariff or tariffs applicable thereto.

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 San Francisco, California, this 11th day of JUNE, 1964.

[Signature] President

George L. Thover

Fredrick B. Hallock

Commissioners

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

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