

Decision No. 67428

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the rates, charges,)
operations and practices of BLUE FLEET)
LINES, INC., a corporation.)

Case No. 7649

Phil Jacobson and L. E. Manderscheid,
for the respondent.
Timothy E. Treacy and Charles P. Barrett,
for the Commission staff.

O P I N I O N

By its order dated June 18, 1963, the Commission issued its order instituting an investigation into the operations, rates and practices of Blue Fleet Lines, Inc., a corporation.

A public hearing was held before Examiner Fraser on December 10, 1963 and February 18, 1964, at Santa Maria, and the matter was submitted.

Respondent presently conducts operations pursuant to Highway Contract Carrier Permit No. 42-1962 and City Carrier Permit No. 42-1963. It was stipulated that respondent was served a copy of Minimum Rate Tariff No. 7 along with the supplements thereto prior to the transportation referred to herein. Respondent has only one terminal in Santa Maria and on January 3, 1963 operated 17 trucks, 37 tractors, 56 semitrailers and 56 full trailers. During January of 1963 the respondent employed 43 drivers, 8 shop men and mechanics, 3 dispatchers, 1 bookkeeper and 1 part time clerk. Its total revenue for the year ending September 30, 1963 was \$917,283.

A Commission representative testified that he visited respondent's place of business on November 14, 1962 and returned intermittently during November and December of 1962 to complete his investigation on the transportation of 120,000 tons of sand and gravel, hauled in dump trucks by the respondent during the period from June through November 1962, on a freeway construction project in the San Diego Territory. He testified the material was hauled to the jobsite from gravel pits located approximately 2 and 9 miles away and was power loaded with the majority of the hauling from the 9-mile pit; the 2-mile pit was used only during a two-week period in July and August. ✓

The witness testified the president of the respondent corporation told him the job was originally contracted at 34 cents a ton but was later increased to 40 cents a ton when the material began to be transported from the 9-mile pit. The witness found no written notice from the shipper authorizing the carrier to charge hourly rates and was advised by employees of the respondent that there were no such agreements. The witness testified he was told that the only documents prepared on the hauling were tachometer charts and a daily truck report, which listed the load number, weight of the load, traveling time, number of stops and unloading time. The witness further testified there were no freight bills or other shipping documents in the respondent's records and he was informed that none had been made. The witness authenticated Exhibits Nos. 1, 2 and 3 and they were accepted in evidence. Exhibit No. 1 consists of daily truck reports, tachometer charts and invoices to the construction company which was paying for the transportation.

The staff witness further testified that on January 11, 1963 an employee of the respondent advised him that the original rate charged by respondent was converted to what appeared to be an hourly rate by a fictitious formula wherein the total monthly tonnage from the drivers truck reports was multiplied by the contract rate of 34 cents (later 40 cents) and the total was divided by the hourly rate of \$12.57 to obtain a figure which the respondent (in Exhibit No. 2) represented to be the number of hours worked. Exhibit No. 2 consists of five sets of two invoices, with the earlier invoice listing a total charge based on the agreed contract rate of 34 cents and the second invoice on the same transportation dated three weeks to a month later with the same total charge being listed as the sum of the rates charged for (ostensible) hours worked. Exhibit No. 3 is composed of ledger sheets from the respondent's records which show that the rate assessed by the respondent in Exhibits Nos. 1 and 2 was actually collected. The witness further testified that the respondent, during the review period, issued 4 additional daily invoices similar to the invoices referred to in Exhibits Nos. 1 through 3. A second staff witness testified that he inspected nine of the respondent's dump truck units at the jobsite on September 5 and 6, 1962 and that the capacity of each two unit train was 24 cubic yards due to the use of sideboards.

A rate expert from the Commission staff testified that he took the set of documents now in evidence as Exhibit No. 1 along with other information presented and formulated Exhibit No. 4, which gives the rate charged by the respondent and the rate computed by the Commission staff on the same transportation. He further testified that the rates assessed, charged and collected

by respondent on the transportation described in Exhibit No. 1 are lower than the lawful minimum rates prescribed by Minimum Rate Tariff No. 7 and that the correct rates and the undercharges are set out in Exhibit No. 4, with the sum of the undercharges in the exhibit totaling \$4,934.39. The witness further testified that it is the position of the staff that a distance rate must be applied since an hourly rate can be used only "when notice in writing is given to the carrier, before the transportation commences, of the shipper's intention to ship under such rates." (Third Revised Page 39 (effective July 1, 1956), M.R.T. 7). The staff witness also authenticated Exhibits Nos. 5 and 6, which were received in evidence. He testified these exhibits are based on the same transportation covered in Exhibit No. 4 and show there would be undercharges even if the hourly rates are applied; Exhibit No. 5 is based on the total of hours taken from the respondent's invoices and shows total undercharges of \$581.54, (at \$13.65 an hour on dump truck equipment having a cubical capacity over 23 but not over 24 cubic yards - based on 75.42 hours from Invoice No. 20272, in Part 1 of Exhibit No. 1); Exhibit No. 6 is based on 91½ hours, which is the total obtained by adding all the hours listed on the Service Recorder Charts on each truck used; at the hourly rate of \$13.65 the undercharges on Exhibit No. 6 total \$2,340.49.

Respondent requested a continuance during the first hearing which was granted by the Commission. The respondent presented no evidence although statements were made by representatives of the respondent on both days of hearing. The office manager who represented the respondent during the first day of hearing made a statement for the record after the Commission staff finished presenting its evidence. He stated he was certain that the rate charged by

the respondent would amount to more than \$14 an hour if the total charges were divided by the number of hours worked. The counsel for respondent attended the second day of hearing and also made a closing statement. He stated the undercharges resulted primarily from three errors made by the respondent. He further stated the respondent was originally advised all transportation would be from the pit located approximately two miles from the jobsite. However, since the material from this pit did not meet the specifications all hauling was transferred to the 9-mile pit. Counsel further stated that the office manager of the respondent was convinced the rate charged was considerably in excess of the \$12.57 per hour allowed gravity haulers of 20 cubic yard capacity; he did not consider the additional 4 cubic yards provided by sideboards, since due to excessive weight restrictions the trucks never carried more than 20 cubic yards of material. Counsel stated the respondent's third error (in addition to excluding the sideboards and not realizing the hauling would be from the 9-mile pit) was not having a written notice from the shipper advising of the shipper's intention to ship under hourly rates; since the shipper favored the lowest legal rate, written instructions would have been furnished at any time, if requested. Counsel asserted that the respondent is now on the edge of bankruptcy, with checks overdrawn at the bank and that the respondent is receiving fuel and parts for his equipment on a collect on delivery basis; that if a fine or suspension is imposed it is likely to force the respondent completely out of business.

After consideration the Commission finds that:

1. Respondent operates pursuant to Highway Contract Carrier Permit No. 42-1962 and City Carrier Permit No. 42-1963.

2. Respondent was served with Minimum Rate Tariff No. 7 and the supplements thereto, prior to the transportation referred to herein.

3. Respondent did not obtain a written authorization from the shipper to charge and collect the hourly rate.

4. The capacity of each of respondent's two unit haulers was 24 cubic yards while performing the transportation referred to herein.

5. Respondent did not issue freight bills or other required shipping documents.

6. Respondent charged and collected less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit No. 4 in the total sum of \$4,934.39.

From the foregoing findings, we conclude that:

1. Respondent violated the provisions of Item 93 and Third Revised Page 39 of Minimum Rate Tariff No. 7.

2. Respondent further violated Sections 3664, 3667, and 3737 of the Public Utilities Code.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since June 1, 1962 in addition to those set forth herein. The Commission expects that when undercharges 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, 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

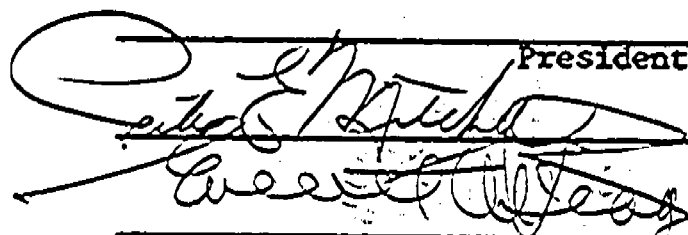
IT IS ORDERED that:

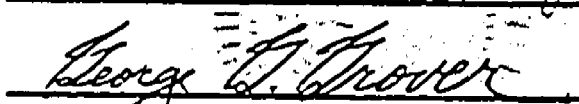
1. Within twenty days after the effective date of this order Blue Fleet Lines, Inc., shall pay to this Commission a fine of \$5,000.
2. Respondent shall examine its records for the period from June 1, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred.
3. Within ninety days after the effective date of this order, respondent shall complete the examination of its records required by paragraph 2 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.
4. 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 2 of this order, and shall notify the Commission in writing upon the consummation of such collections.
5. In the event undercharges ordered to be collected by paragraph 4 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.

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 23rd day of JUNE 4, 1964.



President


George T. Trover


Frederick B. Holluff
Commissioners

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