

ORIGINAL

Decision No. 67484

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Case No. 7703
(Filed September 10, 1963)

Marvin Handler, for respondent.

Robert M. McLeod, for CKFM-Graver, a
joint venture, interested party.

Robert C. Marks, for the Commission staff.

O P I N I O N

By its order dated September 10, 1963, the Commission instituted an investigation into the operations, rates and practices of Douell Trucking Company, a California corporation.

Public hearings were held before Examiner Power on February 13 and 14, 1964, at San Francisco.

Respondent presently conducts operations pursuant to a certificate of public convenience and necessity and radial highway common carrier, highway contract carrier and city carrier permits. Respondent has three terminals in California. Its gross and net revenues for the years 1959 through 1963 were as follows:

<u>Year</u>	<u>Gross Revenue</u>	<u>Net Revenue</u> ⁽¹⁾	<u>Operating Ratio</u>
1959	\$1,551,036	\$ 29,364	103.89%
1960	1,531,204	21,867	98.9
1961	2,266,193	(36,045)	100.6
1962	1,773,250	(126,543)	106.76
1963	645,968	(72,233)	107.9

(1) A net operating loss was incurred in this year. The profit shown was due to nonoperating revenue.

() - Red Figure.

On several days in July 1962, a representative of the Commission's Field Section visited respondent's place of business and checked its records for the period from July 1, 1961 through April 30, 1962, inclusive. During said period respondent transported 4,173 shipments for one customer, CKFM-Graver. The underlying documents relating to all March 1962 shipments for this shipper were taken from respondent's files and submitted to the License and Compliance Branch of the Commission's Transportation Division. Based upon the data taken from said shipping documents a rate study was prepared and introduced in evidence as Exhibit 4. Said exhibit reflects undercharges in the amount of \$12,269.87.

The staff charged violation of Sections 453, 458, 494 and 532 of the Public Utilities Code, all of which pertain to the filed rates of common carriers. The evidence produced concerns Doudell's highway common carrier tariff, i.e., Pacific Coast Tariff Bureau Local and Joint Freight and Express Tariff No. 16, Cal. P.U.C. Nos. 1 and 19 of C. R. Nickerson, Agent.

In the spring of 1961 a joint venture called CKFM-Graver had obtained a contract to construct a portion of a pipeline for

the East Bay Municipal Utilities District. The joint venture requested respondent to bid on the transportation of pipe from a point near Lockeford to the pipeline. The bid of respondent to transport the property at a rate of 79 cents per linear foot of pipe was accepted.

On March 20 and 22, 1961, CKFM-Graver and Doudell entered into agreements. That of March 20, 1961 (Exhibit 5) is a formal contract and covered the transportation.^{1/} In paragraph 4 lessee (CKFM-Graver) agrees to pay "amounts as determined in accordance with Pacific Coast Tariff Bureau, Tariff No. 16 Section 3-A."

The agreement of March 22, 1961 (Exhibit 6) is in the form of a letter accepted by "Doudell Trucking Company by /s/ John W. Doudell, President". It calls for Doudell to perform the unloading and stringing of the pipe. The compensation is to be the "difference between \$.79 per lineal foot and the amount paid to you under the contract referred to above" (that is, the agreement of March 20, 1961).

It will be noted that the agreement of March 22, 1961 appears on its face to be a violation of respondent's obligation as a common carrier because it fits the two services into a previously agreed price pattern. In other words, the parties began with the answer and tailored the problem to produce that answer.

The pipe hauled was 87 inches in diameter and each 40-foot length of it weighed 40,000 pounds, a full truckload. It was picked up at Lockeford about 5.13 miles from the nearest point in the pipeline. This was roughly in the middle of the thirty-mile project.

^{1/} In it CKFM-Graver is referred to as "lessee" and Doudell as "lessor".

The staff rate exhibit rated the shipments for the month of March 1962, only, and found undercharges as indicated above. The vehicle unit rates in Pacific Coast Tariff Bureau, Tariff No. 16 are at two levels; each is stated to apply only over certain lines. Doudell was authorized to apply the rate in Item 529.5. This item limits use of the vehicles to Monday through Friday. Item 529.6 allows service including Saturdays, Sundays and holidays. Both items require a transportation service agreement. There is one such agreement in this case which was revised several times.

The transportation service agreement referred specifically to Item 529.6. Doudell was not a party to this item, as we have seen.

Respondent's traffic manager and the manager for the joint venture at Lockeford testified for their respective employers. Witness Dunnigan for CKFM-Graver testified that, when the District certified the linear footage delivered and accepted on the job he paid Doudell 79 cents per foot for all such pipe. The tariff provided, Item 529.3, that bills should be issued in seven days, and paid within twenty days after the end of the month. It is clear that the provisions for payment in respondent's tariff were completely ignored. It appeared that the billings were made out as required but they were a matter of form only.

The traffic manager testified for Doudell on matters of billing and rating. He sponsored an exhibit (12) in which he rated the shipments for the entire ten-month period of the contract on the rating theory employed by the staff. He arrived at a figure of \$119,406.35 for transportation. The amount actually

billed, as testified to by the shipper witness, was \$115,081.35 for transportation and \$20,328.48^{1/} for unloading and stringing. Since it cannot be determined as a matter of law that \$20,328.48, or for that matter \$16,003.48, is an unreasonably high or low figure for this service and since there is no evidence on the point, it cannot be determined whether a rebate or overcharge has been made.

It appears that the violations here under consideration are of two kinds. First, there is the violation of tariff provisions. Second, there is a serious violation of respondent's common carrier obligation. The service was rendered for a negotiated price. The fact that this exceeded the tariff rate by an amount that may be reasonable compensation for the unloading is purely fortuitous.

A highway common carrier cannot arrive at rates in the way respondent and CKFM-Graver arrived at these. A common carrier must file a rate and follow it. It cannot adopt the course of "protecting minimum rates" which is available to contract carriers. It has no more right to overcharge than to undercharge. Moreover, if common carriers were allowed to negotiate rates in this fashion the duty of such carriers to treat all shippers equally could not be enforced.

Before proceeding to our findings there is a clarification necessary in the record. At the conclusion of the first day of hearing, counsel for respondent offered Exhibits 11, 12, 13 and 14 in evidence. Staff counsel objected because these included rate and service exhibits and he had had no opportunity to examine them. Ruling was deferred but respondent's offer was still open. On the

^{1/} If the Exhibit 12 ratings are used \$16,003.48 would be the amount left for unloading and stringing, since the amount paid was \$135,409.83.

second day of hearing this was inadvertently overlooked. These exhibits will be received in evidence.

The Commission finds that:

1. On or about March 20 and 22, 1961, CKFM-Graver as shipper or lessee and Doudell Trucking Company as carrier or lessor, entered into a contract for the hauling, unloading and stringing of pipe in the vicinity of Lockeford, San Joaquin County.

2. Said contract did not comply with respondent's rates, filed and in effect at the time, nor with the billing and collection provisions of respondent's tariff.

3. In performing its contract with CKFM-Graver, Doudell Trucking Company did charge, demand, collect and receive a different compensation for the transportation of property than the rates and charges specified in its schedules filed and in effect at the time.

4. Doudell Trucking Company did extend to CKFM-Graver a form of contract, facility and privilege not regularly and uniformly extended to all corporations and persons.

5. The evidence does not show whether CKFM-Graver was undercharged or overcharged.

The Commission concludes that Doudell Trucking Company has violated Sections 494 and 532 of the Public Utilities Code.

The Commission staff recommended a maximum penalty of \$5,000 in this case. Such a penalty is not unreasonable in view of the flagrant and willful violation of common carrier duty shown here.

O R D E R

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

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 7th day of JULY, 1964.

Fredrick B. Halaloff
President

George L. Trover

George L. Trover

Commissioners

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