

ORIGINALDecision No. 67659

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into)
 the rates, rules, regulations, charges,)
 allowances and practices of all common)
 carriers, highway carriers and city)
 carriers relating to the transportation)
 of any and all commodities between and)
 within all points and places in the)
 State of California (including, but not)
 limited to, transportation for which)
 rates are provided in Minimum Rate)
 Tariff No. 15).)

Case No. 7783
 Petition for Modification
 No. 1
 (Filed February 10, 1964)

(Appearances are shown in Appendix A)

O P I N I O N

California Manufacturers Association seeks amendment of the provisions of Minimum Rate Tariff No. 15 to provide therein, in connection with the yearly vehicle unit rates, a rule concerning the calculation of charges when service is interrupted or ceased by a carrier, in order to relieve shippers of the responsibility for payment of the full yearly charges.

Public hearing on this matter was held before Examiner Mallory at San Francisco on June 12, 1964. The matter was submitted on that date. Evidence was presented by petitioner, by representatives of Radio Corporation of America, William Volker & Co., California Trucking Association, and the Commission's Transportation Division staff. Each of the witnesses proposed tariff rules, except the California Trucking Association (CTA). CTA proposed that the tariff not be amended at this time.

Minimum Rate Tariff No. 15 provides yearly vehicle unit rates which apply only when the shipper enters into a written

agreement with the carrier.^{1/} The tariff makes no provision for the inclusion in the written agreement of a termination clause, nor for waiver or remission of all or part of the charges under minimum yearly vehicle unit rates when service thereunder has started. When agreement has been reached and service commenced, the minimum rate tariff requires carriers to collect and shippers to pay the agreed rates which shall be no lower than those in the tariff.

Petitioner's traffic manager testified in support of the petition. He stated that questions have been asked concerning the application of the tariff in the circumstances outlined above. No instance had been called to his attention whereby services under the yearly vehicle unit rates had actually ceased or been interrupted. The principal event he could foresee which could cause interruption of service would be a prolonged strike of shipper's or carrier's employees. The witness proposed the following rule to govern interruption of service:

In case of interruption of service resulting from failure of the carrier to provide the service required by an agreement, the rate of charge shall be in proportion to the number of days that the carrier provided service during the period between billing dates.

The witness testified that in his opinion the interruption of service by the carrier due to a strike of the shipper's employees would be a "failure of the carrier to provide the service required by an agreement," even though the carrier could have provided the service in the absence of such a labor stoppage. Amendment of this rule would be required to clearly indicate how certain of the charges should be apportioned, inasmuch as there is not a uniform number of working days in any month. The rule does not provide for the

^{1/} The yearly rates are stated in the tariff as rates and charges for a billing period of one month, such charges being one twelfth of the annual charge.

assessment of overtime and excess hours. No provision in the proposed rule is made for discontinuance of service under the yearly agreement.

An associate transportation rate expert of the Commission staff proposed the following tariff rule:

TERMINATION OF AGREEMENT

The written agreement required by Items Nos. 50, 90 and 91 may be terminated prior to its expiration date by mutual consent of the parties thereto, subject to the following condition:

Service performed under agreements for yearly vehicle unit rates having a duration of less than one year shall be assessed the monthly vehicle unit rates and charges set forth in Items Nos. 300, 310 and 311.

The witness testified that this rule would apply only in the circumstances where there was mutual consent of the parties to terminate the agreement. This rule was not satisfactory to petitioner, who desires a rule to cover situations where the agreement is not terminated, but merely interrupted. Also it would not apply in the circumstance where services ceased and the carrier and shipper could not agree, for any reason, to terminate the agreement.

The representative of Radio Corporation of America, testifying on behalf of the Traffic Managers Conference of California, offered proposed amendments to the rule proposed by the staff, to provide a method of prorating the yearly charges, should the agreement have been in force for six months or more.

The general traffic manager of William Volker & Co. supported petitioner's proposal, but proposed that the tariff charges be assessed for service less than one full year under an agreement to use the yearly rates, and that charges be prorated if the contract was terminated for any reason after service has been performed under the contract for a period of one year or longer.

The California Trucking Association opposed the establishment of any rule in the tariff to govern the determination of charges under yearly rates when service is interrupted or terminated. The witness for CTA stated that he was unaware of any situation which had occurred wherein service under the yearly rates was voluntarily or involuntarily interrupted or terminated. However, the situations which could cause such interruption or termination of services are so diverse that it would be practically impossible to develop a tariff rule which would be fair and equitable under all possible circumstances. Assertedly there is no immediate need for rules of this nature. The CTA witness recommended that no rule be established in this proceeding. The witness stated that to provide equity, when good cause appears, the shipper should be absolved of its duty to complete the agreement. The witness asserted that an appropriate means of securing relief would be through the filing of a formal pleading seeking relief from the terms of the written agreement.

Discussion, Findings and Conclusions

The record is clear that there have been no circumstances under which agreements for the use of yearly vehicle unit rates have been interrupted or terminated by either shippers or carriers. The need for a rule to govern such situations is speculative. The record shows that none of the rules proposed in this proceeding would meet all of the possible circumstances under which service could be interrupted or terminated. Moreover, none of the proposed rules would be equitable to both the shipper and carrier in all circumstances. We find that the proposed rules to govern the payment of charges under written agreement for the application of yearly vehicle unit rates have not been shown to be reasonable. The Commission concludes that the petition should be denied. In the circumstances

where an inequitable situation may result from interruption or termination of a written agreement beyond the control of the parties to the agreement, relief from the tariff provisions may be sought from the Commission through the filing of formal pleadings appropriate to the circumstances.

O R D E R

IT IS ORDERED that Petition for Modification No. 1 in Case No. 7783 is hereby denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 4th day of AUGUST, 1964.

Fredrick B. Holdich
President

W. W. O'Leary

George T. Grover

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.

APPENDIX A

Appearances

Eugene A. Read, for California Manufacturers Association, petitioner.

W. N. Greenham, for Pacific Motor Trucking Co.; C. W. Johnson and Leo McCorkle, for Consolidated Freightways; J. McSweeney, for Delta Lines, Inc.; and Nat H. Williams, for Williams Transfer Co.; respondents.

J. C. Kaspar, A. D. Poe, and H. F. Kollmyer, for California Trucking Association; C. H. Costello, for Continental Can Co.; W. R. Czaban, for Purex Corporation, Ltd.; W. R. Donovan, for C & H Sugar Co.; Donald M. Enos and Reed B. Tibbetts, for Owens Illinois Glass Co.; Ralph J. Graffis, for Morton Salt Company; J. P. Hellmann, for Allied Chemical Corporation; Tad Muraoka, for IBM Corporation; William J. Newlove, for Radio Corporation of America; A. E. Norrbom, for Traffic Managers Conference of California; David B. Porter, for Cannery League of California; Ben Roth and O. H. Stieber, for Crown Zellerbach Corporation; R. J. Springer, for J. C. Penney Co., Inc.; W. Paul Tarter, for William Volker & Co.; and Milton A. Walker, for Fibreboard Paper Products Corporation; interested parties.

Edward E. Tanner and R. A. Lubich, for the Commission staff.