

Decision No. 67709**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates
and practices of AMERICAN TRANSFER CO.,
a corporation, AMERICAN TRANSFER CO.
OF STOCKTON, INC., a corporation and
CENTRAL CAL FREIGHT LINES, a corpo-
ration.

Case No. 7323

Marvin Handler, C. R. Nickerson, and G. Henderson,
for respondents.
C. J. Van Duker, for Alta Vineyards Company; J. W.
Wiley, for Sheldon Oil Company; M. C. Anderson,
for Schenley Industries, Inc.; Thomas B. Kircher
and Keith M. Brown, for Spreckels Sugar Co.; and
E. J. McSweeney, for Pacific Motor Trucking
Company, Pacific Motor Transport Company;
interested parties.
Elmer Sjostrom and Frank J. O'Leary, for the
Commission staff.

O P I N I O N

On May 1, 1962, the Commission instituted its order of investigation into the operations, rates and practices of the following three corporations, which are in effect, jointly owned and managed, American Transfer Co., a corporation, American Transfer Co. of Stockton, Inc., a corporation, and Central Cal Freight Lines, a corporation, for the purpose of determining whether the respondents have violated Section 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Commission Minimum Rate Tariff No. 2; also whether respondent American Transfer Co. has violated Section 458 of the Public Utilities Code by using a device to assist or permit any corporation or person to obtain

transportation for property between points within this State at less than the applicable rates and charges specified in Western Motor Tariff Bureau Tariffs Nos. 33-B and 3-D.

A duly noticed public hearing was held and the matter was submitted on May 15, 1963 after briefs were filed by the respondents and the Commission staff. Each respondent was treated separately during the presentation of evidence and will be so considered herein.

American Transfer Co.

It was stipulated that the American Transfer Co. operates under unrestricted Radial Highway Common Carrier Permit No. 10-4632, issued on May 13, 1947 and unrestricted Highway Contract Carrier Permit No. 10-4633, issued on May 10, 1947.

The evidence shows that American Transfer Co. also operates under City Carrier Permit No. 10-5820 issued August 15, 1950 and as a petroleum irregular route carrier under certificates of public convenience and necessity granted by Decision No. 42866 dated May 10, 1949 in Application No. 30007 and by Decision No. 44372 dated June 20, 1950 in Application No. 31051, and as a highway common carrier of general commodities under a certificate of public convenience and necessity granted by Decision No. 63024 dated January 9, 1962 in Application No. 43207. The evidence further shows that respondent was served copies of Minimum Rate Tariffs Nos. 2, 6, 8, C.C.T. 1-A and C.C.T. 2-A during 1948 and that Distance Table No. 4 was served on respondent August 20, 1951.

The major issues herein involve the interpretation of the tariffs concerned and the method of computing the rates. Staff Exhibit No. 1 contains 26 alleged violations on transportation

performed during 1960 and 1961. The staff rated Parts 1, 4 and 8 (of Exhibits Nos. 1 and 2) as split delivery shipments under the provisions of Item 230-E of Minimum Rate Tariff No. 2. The respondent rated a portion of each truckload as a separate shipment on a separate bill of lading to its destination and then rated the remainder of the load as a second shipment on a second bill of lading from the destination of the first shipment to the destination points of the remaining shipments. Respondent alleges its system of rating is proper under Section 3663 of the Public Utilities Code, since there is nothing in the law or the tariffs to forbid the respondent from rating the transportation as two shipments and respondent has charged and collected rates which are not lower than the tariff rates published by several certificated highway common carriers for the same commodities transported between the same points. The staff replied to issue two bills of lading at point of origin for the purpose of converting a split delivery shipment into two shipments (under the provisions of Item 170-G of Minimum Rate Tariff No. 2) is unlawful under the interpretation of split delivery shipments adopted by Decisions Nos. 57829 and 58424 in Case No. 5330.

Respondent rated several shipments (Parts 1, 4, 8 of Exhibit No. 2) hauled by truck exactly as though they were carried by rail, since they were hauled from an on-rail point of origin to a consignee located on its own rail spur. On each of these loads the respondent's trucks made several deliveries to other off-rail consignees after the first delivery to the on-rail consignees. The latter deliveries were rated as separate shipments on a separate bill of lading, from the first on-rail delivery point to their individual consignees. The staff admitted the goods

could have been hauled by rail to the on-rail consignee and then the portions destined to off-rail consignees hauled by truck under the rates charged by the respondent. The latter argues since it can be done lawfully by a combination of rail and truck hauling it should also be lawful if the entire haul is by truck, where the same rates are charged. Respondent relies on Section 3663 of the Public Utilities Code and on the tariffs of various highway common carriers which permit this practice. The staff argues that Item 230 of Minimum Rate Tariff No. 2 provides that the distance of an off-rail consignee from an on-rail point on which the off-rail charge is based must be computed from a team track where any member of the public can pick up a rail shipment as distinguished from a privately owned spur track where only a single consignee can accept delivery. The staff maintains the off-rail charge should be computed from the nearest team track to the individual consignees, not from the privately owned spur track.

The staff and the respondent agree on the application of a rail rate on Parts 2, 3, 5, 6, 7, 9 and 10 (of Exhibit No. 2) from the on-rail point of origin to the team track in San Francisco. The staff then applied the off-rail charge based on the mileage from the San Francisco team track to the final off-rail destination. The respondent then relied on Item 210-J of Minimum Rate Tariff No. 2 which authorizes the application of city carrier rates (when the route from team track to the final destination is within the limits of a single incorporated city), by applying the minimum one hour transportation charge provided in Item 560-K of City Carriers' Tariff No.1-A. The staff maintained that the respondent's use of a city carrier rate was improper because the respondent does not have an equipment list on file as required by Item 575

of the City Carriers' Tariff and also does not have a place of business in San Francisco as required by Item 560-K. The respondent presented additional evidence that the City Carrier rates used were actually higher than off-rail arbitrary rates the respondent's rate expert found in tariffs of Valley Motor Lines and Pacific Motor Trucking Co.

The rate witness for the respondent testified that the freight bills on Parts 1, 4 and 8 should have included the stamped notation "power loaded and unloaded". The stamp was omitted due to an error since all Alta Vineyard shipments are power loaded and unloaded.

The respondent used an hourly rate for a delivery in the City of Pittsburg on the off-rail portion of the rate used on Part 11. The staff maintains this is improper because no hourly rates have been established for the City of Pittsburg. The staff rated the count as a split-delivery shipment.

The staff contends that the respondent applied improper rates on Parts 12, 13 and 14 (of Exhibit No. 2) due to the counts being rated without regard to the time limitations and/or documentation requirements specified by Items 160 and 85 of Minimum Rate Tariff No. 2. The staff ratings are based on the supposition that the date on the freight bill is always the date of pickup. The respondent presented evidence which indicates at the worst an error in documentation (properly making out the freight bill) on all three parts, although respondent concedes an undercharge of \$11.24 on Part 14 . . .

The respondent admitted the undercharges alleged on Parts 15, 16, 17 and 18 (of Exhibit No. 2) which concern the free return of pallets to Alta Vineyards Company. Testimony was presented to show that the respondent did not realize the empty pallets were being returned to their point of origin and that these undercharges have been billed and will be collected.

Parts 19 through 26, inclusive, concern the purchase and sale of fuel oil, road oil and asphalt. The staff contends that the respondent purchased the oil or asphalt and then transported it to the buyer and sold it for a sum considerably less than the authorized minimum rate for hauling the product from the seller to the buyer. The respondent argued that there is insufficient evidence to prove an illegal buy and sell operation since the staff has failed to place any facts in evidence and are merely relying on alleged prices copied from the respondent's records. The staff rating on Parts 19 through 26, inclusive, is based almost exclusively on the documents which were obtained from the records of the respondent. The record shows these documents were made out by the drivers and are not reliable. The record further shows that the staff ratings on Parts 22 through 26 are based on a mobile mixer, whereas the mixer actually used was of a different type.

We are not convinced that the record supports a finding that the so-called buy and sell operations were not legitimate.

The respondent filed a motion to dismiss for lack of evidence, which was taken under submission.

Central Cal Freight Lines

It was stipulated that Central Cal Freight Lines is a California corporation, operating over the public highways under Radial Highway Common Carrier Permit No. 10-8090, authorizing statewide transportation of general commodities, issued July 1, 1954, Highway Contract Carrier Permit No. 10-8113, authorizing statewide transportation of general commodities, issued July 19, 1954, and City Carrier Permit No. 10-9250, issued July 18, 1961,

authorizing transportation wholly within the cities of Fresno, San Leandro, San Francisco, Oakland, Hayward, Albany, Berkeley, Fremont, El Cerrito, Richmond and San Pablo. It was further stipulated that the respondent was served a copy of Minimum Rate Tariff No. 2, Minimum Rate Tariff No. 8, Minimum Rate Tariff No. 10, and Distance Table No. 4 on July 1, 1954; and City Carriers' Tariff No. 1-A, Highway Carriers' Tariff No. 1-A, City Carriers' Tariff No. 2-A on July 19, 1961.

Staff Exhibits Nos. 7 and 8 contain 19 counts from the 150 shipments hauled by the respondent during April and May 1961. The respondent admitted the undercharges on Parts 1, 15 and 17 of Exhibit 8 and contested the remaining counts. The rating procedure on Parts 2 through 14, inclusive, was the same as that employed by American Transfer Co. on Parts 1, 4 and 8 of Exhibit No. 2, except that Central Cal Freight Lines issued only one bill of lading from point of origin. The respondent has rated these counts under Item 170-R of Minimum Rate Tariff No. 2, which was in effect during April and May of 1961. This item covers split delivery shipments and provides in subparagraph "(g)" that "component parts may be rated as separate shipments from any point or points on the split delivery route... to point or points of destination of such component parts"; provided that the written instructions to the carrier show "the points between which the separate shipment rates are to be applied". The staff admits the correctness of the rates applied by the respondent under Item 170-R(g), but further alleges that each component of the split delivery shipments cannot be rated as a separate shipment under Item 170-R(g), because the respondent has failed to properly

identify the points in each part of each shipment between which specific rates are to be applied. The staff therefore rated each part as a conventional split delivery shipment. The respondent replied that there is sufficient information on the freight bills to satisfy the requirements of Item 170-R(g) and even if the information is not detailed enough it is a simple error in documentation, not an undercharge violation. The respondent also presented a prominent rate expert who testified that he found numerous highway common carrier rates which could have been used by the respondent (under the application of 3663 of the Public Utilities Code) which are lower than the rates actually charged and collected. The witness explained that these rates are illustrated in Exhibits 9 through 20, inclusive, which concern Parts 2 through 14 (excluding Part 6) of Exhibit No. 8; and that the ratings used on Exhibits 9 through 20 show that rates lower than those charged could have been lawfully assessed and collected. The witness testified that he did not prepare an exhibit on Part 6 because the rate charged by the respondent was the lowest minimum rate.

The staff rate expert testified that the respondent designated a private rail spur used by a shipper as an on-rail point on Parts 2 through 14 in violation of the provisions of Minimum Rate Tariff No.2. The respondent's position has already been stated on this issue.

The staff and the respondent also differ on Parts 16, 18 and 19. The staff considered the date on the freight bill to be the date of pickup. Evidence presented by the respondent shows that the master bill of lading was in possession of the carrier prior to the pickup on Parts 16 and 18. The evidence on Part 19 is conflicting but it appears that the respondent's trucks would

frequently partially load in the afternoon and return to the terminal. The next day the pickups would continue, although those who made out the freight bills frequently marked the partial pickup on the first day as a separate pickup. Thus the freight bill would show four pickups on four days when there actually were only three days of pickups.

American Transfer Company of Stockton, Inc.

It was stipulated that the American Transfer Company of Stockton, Inc. operates under Radial Highway Common Carrier Permit No. 39-5730, issued February 3, 1958, authorizing statewide transportation of general commodities, and City Carrier Permit No. 39-5731, issued February 3, 1958, authorizing transportation of general commodities wholly within Stockton. It was further stipulated that Minimum Rate Tariffs Nos. 2, 8 and 10, Distance Table No. 4 were served on respondent February 10, 1958.

Staff Exhibits Nos. 21 and 22 consist of copies of 18 freight bills removed from the records of the respondent after an investigation and a review of 1,000 freight bills, which covered all transportation performed by the applicant from January 1 through 19, 1961.

The respondent conceded the undercharges on Parts 1 through 9, inclusive, and on Part 12 of Exhibit No. 22. The alleged undercharges on Parts 10, 11, 13, 14, 15, 16, 17 and 18 were contested. The record shows that the contested parts in Exhibits Nos. 21 and 22 moved in interstate commerce and that the rates charged by the respondent were higher than the authorized minimum rate on the interstate transportation.

All of the respondents had representatives who testified that if improper rates were charged it was due to error and was not

intentional. The record shows that two prominent rate experts and the counsel representing the respondents are convinced that the rates applied by the respondents herein are lawful and proper rates.

After consideration the Commission makes the following findings of fact.

American Transfer Co.

1. Respondent American Transfer Co. operates under permits and certificates granted by this Commission as previously stated.
2. Respondent was served with the appropriate tariffs and distance tables.
3. The staff rating and documentation requirements are correct on Parts 1, 4, 8, 11 and 12 of Exhibits 1 and 2.
4. The staff application of the rail rate on Parts 1, 4 and 8 of Exhibits 1 and 2 from point of origin to a public team track is correct under Items 210 and 230 of Minimum Rate Tariff No. 2.
5. The respondent has improperly applied hourly rates from Item 560-K of City Carriers' Tariff No. 1-A on Parts 2, 3, 5, 6, 7, 9, 10 and 11 of Exhibits 1 and 2.
6. The staff was correct in rating Parts 1, 4 and 8 of Exhibit No. 2 as split delivery shipments.
7. Respondent omitted the notation "power loaded and unloaded" required by Item 240 of Minimum Rate Tariff No. 2 on Parts 1, 4 and 8 of Exhibits Nos. 1 and 2.
8. The staff rating on Parts 13 and 14 is correct: ✓

9. The respondent returned pallets free of charge as alleged by the staff on Parts 15, 16, 17 and 18 of Exhibit No. 2.

10. The alleged undercharges on Parts 19 through 26 of Exhibit No. 2 were not proved.

11. The motion to dismiss filed by the respondent should be denied.

Central Cal Freight Lines

12. Respondent Central Cal Freight Lines operates under radial, contract and city carrier permits issued by this Commission as previously stated.

13. Respondent was served with the appropriate tariffs and distance tables.

14. Respondent Central Cal Freight Lines charged less than the lawfully prescribed minimum rate on Parts 1 through 15 and on Parts 17, 18 and 19 of Exhibit No. 3.

15. The staff rating on Part 16 is correct. /

American Transfer Co. of Stockton, Inc.

16. Respondent American Transfer Co. of Stockton, Inc. operates under radial and city carrier permits issued by this Commission as previously described.

17. Respondent was served with the appropriate tariffs and distance tables.

18. Respondent American Transfer Co. of Stockton, Inc. charged less than the lawfully prescribed minimum rate on Parts 1 through 9, inclusive, and Part 12 of Exhibit 22.

19. The alleged undercharges on Parts 10, 11, 13, 14, 15, 16, 17 and 18 of Exhibit No. 22 were not proved.

Based upon the foregoing findings of fact, the Commission concludes that:

1. American Transfer Co., a corporation, has violated Section 3667 of the Public Utilities Code as demonstrated by the following undercharges from Exhibit No. 2.

<u>Part No.</u> <u>Exhibit 2</u>	<u>Freight</u> <u>Bill No.</u>	<u>Date of</u> <u>Fr. Bill</u>	<u>Amount of Undercharge</u>
1	2442	Nov. 30, 1960	\$ 13.50
2	1690	Nov. 1, 1960	48.22
3	2638	Dec. 6, 1960	35.05
4	3048	Dec. 28, 1960	10.43
5	5575	Apr. 11, 1961	43.55
6	5730	Apr. 18, 1961	31.84
7	6045	May 2, 1961	39.11
8	6514	May 12, 1961	18.46
9	6348	May 15, 1961	61.06
10	6821	May 23, 1961	36.45
11	6776	May 24, 1961	17.84
12	2291	Nov. 29, 1960	90.55
13	3109	Dec. 28, 1960	13.47 ✓
14	3110	Dec. 30, 1960	136.87 ✓
15	Unnumbered	Dec. 7, 1960	19.19
16	Unnumbered	Mar. 16, 1961	17.20
17	Unnumbered	May 3, 1961	11.50
18	Unnumbered	June 5, 1961	11.13
19 through 26	- Not Proved		

Total Undercharges of \$ 655.42 ✓

2. Central Cal Freight Lines, a corporation, has violated Section 3667 of the Public Utilities Code as demonstrated by the following undercharges from Exhibit No. 8.

<u>Part No.</u> <u>Exhibit 8</u>	<u>Freight</u> <u>Bill No.</u>	<u>Date of</u> <u>Frnt. Bill</u>	<u>Amount of Undercharge</u>
1	13301-13302	Apr. 10, 1961	\$ 6.11
2	13284, et al	Apr. 7, 1961	27.48
3	13333, et al	Apr. 12, 1961	56.74
4	13367, et al	Apr. 14, 1961	115.05
5	13408, et al	Apr. 19, 1961	38.81
6	13436	Apr. 24, 1961	132.50
7	13460, et al	Apr. 26, 1961	95.50
8	13503, et al	Apr. 29, 1961	99.66
9	13551, et al	May 3, 1961	19.01
10	40040, et al	May 10, 1961	61.23
11	40089, et al	May 15, 1961	91.36
12	40159, et al	May 23, 1961	19.46
13	40216, et al	May 26, 1961	124.80
14	40229, et al	May 27, 1961	113.09
15	13346, et al	Apr. 13, 1961	14.76
16	13423 & 13424	Apr. 24, 1961	22.50 ✓
17	13546	May 3, 1961	34.94
18	40035, et al	May 10, 1961	39.69
19	40015, et al	May 10, 1961	<u>190.18</u>

Total Undercharges of \$1302.87 ✓

3. American Transfer Co. of Stockton, Inc., a corporation, has violated Section 3667 of the Public Utilities Code as demonstrated by the following undercharges from Exhibit No. 22.

<u>Part No.</u> <u>Exhibit 22</u>	<u>Freight</u> <u>Bill No.</u>	<u>Date of</u> <u>Frnt. Bill</u>	<u>Amount of Undercharge</u>
1	8254	Jan. 12, 1961	\$ 14.07
2	8255	Jan. 10, 1961	14.07
3	8274	Jan. 14, 1961	14.07
4	8322	Jan. 26, 1961	14.11
5	8526	Feb. 21, 1961	14.11
6	8273	Jan. 16, 1961	65.25
7	8256	Jan. 10, 1961	8.04
8	8523	Feb. 23, 1961	5.07
9	8925	Apr. 28, 1961	17.26
10	Not Proved		
11	Not Proved		
12	8360	Feb. 2, 1961	12.66
13 through 18	- Not Proved		

Total Undercharges of \$178.71

The order which follows will direct respondents to review their records to ascertain all undercharges that have occurred since July 1, 1962 in addition to those set forth herein. The Commission expects that when undercharges have been ascertained,

respondents 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 respondents, or their attorneys, have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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. If on or before the twentieth day after the effective date of this order, American Transfer Co., Central Cal Freight Lines and American Transfer Co. of Stockton, Inc. have not paid all of the fines referred to in paragraph 8 of this order, their operating authorities shall be suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the twentieth day after said effective date. Respondents shall not by leasing the equipment or other facilities used in operations under said operating authorities, for the period of suspension, or by any other device, directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. Respondents shall post at their terminals and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that their operating authorities have been suspended by the Commission for a period of five days; that within five days after such posting

respondents shall file with the Commission a copy of such notice together with an affidavit setting forth the date and place of posting thereof.

3. The respondents cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith, in a lesser amount than the minimum rates and charges prescribed by law and the regulations of this Commission.

4. Respondents shall examine their records for the period from July 1, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred.

5. Within ninety days after the effective date of this order, respondents shall complete the examination of their records required by paragraph 4 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

6. Respondents 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 4 of this order, and shall notify the Commission in writing upon the consummation of such collections.

7. In the event undercharges ordered to be collected by paragraph 6 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondents 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.

8. As an alternative to the suspension of all of their operating authorities as imposed by paragraph 1 of this order, American Transfer Co. may pay a fine of \$500.00, Central Cal Freight Lines may pay a fine of \$1,500.00 and American Transfer Co. of Stockton, Inc. may pay a fine of \$250.00 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 each of the respondents herein. The effective date of this order as to any of the respondents shall be twenty days after the completion of service on such respondents.

Dated at San Francisco, California, this 11th day of AUGUST, 1964.

Fredrick B. Haliloff
President
John L. Hill
Walter B. ...

Commissioners

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

CONCURRING OPINION OF COMMISSIONER GROVER

I concur in the order. I also concur in the opinion and the findings, except for that portion of Finding 3 which expressly approves the staff's documentation requirements as to Parts 1, 4 and 8 of Exhibits #1 and #2. The decision properly denies this respondent the right to rate such movements via a private spur (except as to the consignee actually located on such spur), and the result is to require these ratings to be constructed over the nearest team track. As I understand the evidence, the staff method of documentation is no less favorable to the respondent's position than is the respondent's own documentation, once the team track requirement is incorporated. Accordingly, I would not pass on the documentation issue here; it is relatively technical, and a decision thereon should be reserved to a case which actually requires such a determination.

As to Findings 8 and 15, I agree solely because I do not believe, upon the evidence presented here, that the pickups were made as alleged by respondents. (See the dissent to Decision 67577, dated July 21, 1964, in Case 7240).

Some additional explanation of my reasons for concurring in Finding 5 may be helpful. The charges under the hourly rates in question would be determined by the elapsed time from the carrier's terminal to the end of the rail portion of the shipment and then to the point of delivery and then back to the terminal; without a terminal in that city, a carrier cannot compute when the hours begin and end. An additional reason for not permitting the hourly rates is that the transportation was never really performed in part by rail; even if there were a terminal owned by this carrier in that city, we have no idea what the "off-rail" hours would be. I have given no attention to the fact that the carrier did not have an equipment list on file; it is enough that, without a terminal in that location, the hourly rates could not be used.

George B. Grover