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ORIGINAL

Decision No. 68133

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of GROSKOPF-WEIDER TRUCKING CO., INC., a corporation.	Case No. 7759

J. Richard Townsend, for respondent.

W. C. Bricca and George T. Kataoka, for the Commission staff.

O P I N I O N

By its order dated October 29, 1963, the Commission instituted an investigation into the operations, rates and practices of Groskopf-Weider Trucking Co., Inc., a corporation.

Public hearings were held before Examiner Gravelle on April 9, 10 and 24, 1964, at San Francisco.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 49-1018 dated April 30, 1958 and Highway Contract Carrier Permit No. 49-1590 dated April 30, 1958. Respondent has terminals in Sonoma and Montebello. It owns and operates seven units of power equipment and twenty-six units of trailer equipment as reported to the Commission in its 1964 equipment list. It employed 16 persons at the time this investigation was made. Its gross revenue for the calendar year 1963 was $272,934.00. Copies of the appropriate tariff and the distance table were served upon respondent.

On January 23, 25, 28, 29, 1963 and again on March 1, 1963, a representative of the Commission's Field Section visited respondent's place of business and checked its records for the period from August

through December, 1962. The underlying documents relating to 34 shipments were taken from respondent's files, photocopied and the copies submitted to the License and Compliance Branch of the Commission's Transportation Division, Exhibits Nos. 2, 3 and 4. Based upon the data taken from said shipping documents a rate study was prepared and introduced in evidence as Exhibit No. 1, (later amended by Exhibit No. 8). The two latter exhibits reflect alleged undercharges in the amount of $2,806.18. They do not reflect any undercharges for the shipments indicated by Exhibits Nos. 3 and 4 since there was insufficient information on the shipping documents in those exhibits to enable the staff rate expert to compute the minimum rates and charges.

Throughout the hearing and in the brief filed on behalf of respondent the various parts of Exhibits Nos. 1 and 8 were grouped in categories reflecting similar movements. They will be so treated in this opinion.

Parts 1, 2, 3, 10, 11 and 13 were shipments of beet pulp from Tracy or Salinas to the Triangle Grain & Milling Co. at Bellflower. The issue involved in these parts was whether or not the point of destination was on or off rail. The above-named consignee operates two locations in Bellflower, one is on rail and the other is off rail. It is the staff's contention that the subject shipments were made to the off-rail point. It is the contention of respondent that the staff did not prove that such shipments were made to the off-rail point and they could have been made to the on-rail point.

A former employee of respondent who held a position as dispatcher in respondent's Montebello terminal testified that he was familiar with these shipments, that he had dispatched them and that he always directed the drivers to the off-rail point, but that he had "...no way of knowing the unloading or the facilities involved." The field representative for the staff described the facilities at the

on-rail point in Bellflower and it appears from his uncontradicted testimony that the facilities there were used for the unloading of rail cars into trucks for subsequent highway movement. We find that the rating procedure employed by the Commission staff in Parts 1, 2, 3, 10, 11 and 13 of Exhibit No. 1 were correct and respondent's method of rating said parts has resulted in undercharges of $133.55.

Parts 4, 5, 6, 7, 8, 9 and 12 were shipments of grain from the Rio Vista area to Western Consumers Feed Co. in Paramount. All of these shipments with the exception of Part 7 were rerated by the staff rate witness in her amendment to Exhibit No. 1 and were included in Exhibit No. 8. Counsel for respondent does not argue that there were no undercharges with respect to these shipments, but rather that respondent should not be penalized because of the difficulty in determining the correct rate to be applied. It is fundamental to this type of proceeding that it is the carriers' duty to apply the correct rate to shipments which it may transport. Difficulty of interpretation can be no defense when the carrier has freely chosen a particular rate.

As to Part 7, respondent argues that the staff rate expert is in error in her rating because she did not revise that part in the same manner in which the similar parts were revised. The reason given by the staff witness for not recomputing Part 7 was that there was no "shipper issued" master bill of lading that could be used to include said part. There was a "shipper issued" document dated November 19, 1962 which she employed in rerating Part 6 which moved on November 19 and 20, 1962 but Part 7 which moved on November 28 and 29, 1962 were too far removed in time to rely upon the November 19, 1962 document. There was a bill of lading dated November 27, 1962 in connection with Part 7 but this document was admittedly issued by the carrier, not by the shipper and hence does not comply

with the tariff requirement of Item 85 of Minimum Rate Tariff No. 2. We find that the rating procedure employed by the Commission staff in Parts 4, 5, 6, 8, 9, and 12 of Exhibit No. 3 and Part 7 of Exhibit No. 1 were correct and respondent's method of rating said parts has resulted in undercharges of $446.55.

Parts 14, 16, 17, 19, 20, 21 and 23 were shipments of plywood from Cloverdale to points in Southern California. The staff rate expert rerated Part 21 after respondent showed at the hearing that a portion of that shipment which its documents had shown moving to San Diego was actually shipped as a separate movement. Mrs. Groskopf who testified for respondent and was responsible for its rating recomputed these parts on the witness stand, her recomputation however, still resulted in undercharges. The basic difference in these parts between respondent and the staff concerns the application of Item 690 or Item 710 of Minimum Rate Tariff No. 2. Mr. C. R. Nickerson, a rate expert and tariff publishing agent, to whom respondent is a client, testified as to the application of Item 690. The staff rate expert on the other hand testified that in her opinion Item 710 was properly applicable. The issue is whether a shipment moving from a point outside a 150-mile area of Los Angeles to a team track within such 150-mile area on an alternative rail rate, and a portion of such shipment moving subsequently by highway to another point within the 150-mile area should be computed entirely on the original weight of the shipment or whether the subsequent truck movement should be computed on its actual weight. Respondent urges that there is a tariff ambiguity which should be construed against its maker, in this case the Commission, and hence respondent's application of Item 690 was correct. The Commission finds no such ambiguity. If any such ambiguity did exist it was dispelled by Informal Ruling No. 73 dated October 31, 1960 and published in the Commission's Ruling Manual two

years prior to the transportation herein. Furthermore, this precise issue has been previously decided by the Commission in Decision No. 67291 in Case No. 7172 dated May 26, 1964 at mimeographed page No. 6. We find that the rating procedure employed by the Commission staff in Parts 14, 16, 17, 19, 20 and 23 of Exhibit No. 1 and Part 21 of Exhibit No. 8 were correct and respondent's method of rating said parts has resulted in undercharges of $833.07.

Parts 15 and 22 concern the same question of the applicability of Item 690 or Item 710 of Minimum Rate Tariff No. 2 discussed above and we find that the rating procedures employed by the Commission staff in Parts 15 and 22 were correct and respondent's method of rating said parts has resulted in undercharges of $36.20.

Parts 24, 25, 26 and 27 were shipments of roofing material from Celotex Corporation in Los Angeles to Oakland. Respondent rated these as multiple lot shipments although the master bill of lading was not issued until the date of the last pickup instead of before or at the time of the first pickup. Respondent argues that the shipper could have complied with the tariff requirement but failed to do so through inadvertence, that such error in procedure has since been corrected, and hence the carrier should not be penalized. This is an argument in mitigation and will be so treated in assessing the penalty herein. We find that the rating procedures employed by the Commission staff in Parts 24, 25, 26 and 27 of Exhibit No. 1 were correct and respondent's method of rating said parts has resulted in undercharges of $1,037.53.

Part 29 was a shipment of concrete blocks from Van Nuys to San Ramon and Concord. Respondent has rated this as a split-delivery shipment, the staff has rated it as two separate shipments. The reason for the staff method of rating was that neither the freight bills

nor the shipping order in Exhibit No. 2 indicate any delivery to Concord. They specify delivery only to San Ramon; when the drivers arrived at San Ramon they were then instructed to make a delivery to Concord. Mrs. Groskopf testified that her rating was in reliance on Freight Bill No. 32729 but that document indicates the consignee of the entire shipment to be "Morgan's Masonry, San Ramon, Calif." We find that the rating procedures employed by the Commission staff in Part 29 of Exhibit No. 1 were correct and respondent's method of rating said part has resulted in an undercharge of $29.47.

Respondent concedes the undercharges in Parts 18, 28, 30, 31 and 32 of Exhibit No. 1. We find that those parts result in undercharges of $289.81.

Exhibit No. 3 reflects a movement of empty pallets for which no charge was made. Respondent admits this movement was free transportation but contends that the documents reflecting the outbound movement of these pallets are necessary in order to determine whether or not a charge should have been assessed. On the one hand respondent claims the Commission staff should have offered these outbound documents in order to prove this violation, but, on the other hand, respondent with those very documents in its possession has failed to offer them as a matter of defense. We find that Exhibit No. 3 reflects a prima facie case of free transportation in violation of Minimum Rate Tariff No. 2 and that respondent has failed to offer competent evidence to refute such prima facie case although such evidence was in its possession and control.

Exhibit No. 4 reflects a shipment of lumber which the staff claimed was in violation of Item 255-E of Minimum Rate Tariff No. 2 because it did not indicate the weight of the shipment. Respondent claims that said shipment and documentation showing a board foot unit

of measurement was correct because delivery was made to an on-rail point. Mrs. Groskopf had no personal knowledge of the point of delivery of the shipment. The documents were similar to Parts 15 and 22 of Exhibit No. 2 in which delivery was made to an off-rail point and for which receipt was reflected by the signature of a Mr. Bach. We find that delivery of the shipment reflected by Exhibit No. 4 was made at an off-rail point, that the weight of the shipment as required by item 255-E of Minimum Rate Tariff No. 2 was not supplied on the shipping documents and that the Commission staff was therefore unable to rate such shipment.

Counsel for respondent concedes in his brief that even if all his arguments were to be accepted by the Commission there would be undercharges of $1,964.10, but he requests that due to the fact that respondent had attempted to follow proper rating procedures as witnessed by its retention of a rate expert, and the unusual nature of some of the violations based on tariff interpretation no penalty should be assessed.

Staff counsel pointed out that respondent has been the subject of two prior Commission investigations. One of those resulted in a cease and desist order and a directive to collect undercharges, (Decision No. 56346 in Case No. 5951), and the other resulted in a suspension of operating authority for a 7-day period and a directive to collect undercharges (Decision No. 61253 in Case No. 6478). It was his recommendation that based upon the total amount of undercharges respondent should be fined $3,500.00.

Based upon the findings of fact in the body of this opinion which indicate total undercharges of $2,806.18 the Commission concludes that respondent violated Sections 3664 and 3668 of the Public Utilities Code and should pay a fine in the amount of $4,000.00.

The order which follows will direct respondent to review its records to ascertain all undercharges that have occurred since October 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 the undercharges. 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 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 pay a fine of $4,000.00 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall examine its records for the period from October 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 proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; respondent shall file 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 27th day of OCTOBER, 1964.

Frederick B. Holoboff
President

Commissioners