

Decision No. 68344**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 PREMIER)
 TRANSPORT, a corporation.)

Case No. 7762
 (Filed Oct. 29, 1963)

Glenn R. Watson, for respondent.
Lawrence O. Garcia, C. P. Barrett, Frank J.
O'Leary, 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 Premier Transport, a corporation, (hereinafter referred to as respondent) for the purpose of determining whether respondent permitted corporations or persons by means of a device to obtain transportation of property at less than the minimum rates prescribed or approved by the Commission in violation of Section 3668 of the Public Utilities Code.

Public hearing was held before Examiner Mooney on May 5, 1964, at Los Angeles at which time the matter was submitted.

The issue in this case is whether respondent and Premier Marble Products, a corporation, and Premier Limestone Products, a corporation, (hereinafter referred to as Premier Marble and Premier Limestone, respectively) are so united in interest, management and control as to make the use by respondent of purported subhauliers, who receive less than the minimum rates for transportation

of property of Premier Marble or Premier Limestone, a device by which Premier Marble or Premier Limestone obtain transportation at rates less than those established by the Commission in Minimum Rate Tariff No. 2.

It was stipulated that respondent was issued Radial Highway Common Carrier Permit No. 19-38070 and City Carrier Permit No. 19-41434; that respondent has been served with Minimum Rate Tariffs Nos. 2 and 5 and Distance Table No. 4 and all supplements and corrections thereto; and that the photostatic copies of shipping documents in Exhibit 1 are true and correct copies of documents in the respondent's files.

Respondent's terminal is located at 909 South Fremont, Alhambra, California. The Equipment List filed by respondent with the Commission on February 13, 1964, shows that it owns and operates three tractors, two full trailers and three semitrailers. Respondent employs three drivers and has no one else on its payroll. Its gross revenue for the year 1963 was \$108,955.46.

Premier Marble and Premier Limestone have offices and a warehouse at the same location occupied by respondent. According to the record, the officers, directors and shareholders of respondent, Premier Marble and Premier Limestone are as follows: Glenn R. Watson is the president and a director of the three corporations and owns 50 percent of the shares of respondent and 100 percent of the shares of each of the other two corporations; Donald M. Gustafson is the vice president and a director of each of the three corporations; Ivan D. Meecham is the treasurer and a director of respondent and owns 50 percent of the shares of respondent;

Dorothy Meecham is the secretary of respondent; Dorothy Watson is the secretary-treasurer of both Premier Marble and Premier Limestone.

A Commission representative testified that on various days during October and November, 1962, and January and October, 1963, he visited respondent's terminal and reviewed its records for the periods September through November, 1962, and August and September, 1963. He stated that the administrative functions of respondent are performed by employees of Premier Limestone to whom it pays \$250 per month for this service; that respondent pays an additional \$150 per month to Premier Limestone as rental for the terminal facilities which include a room at the rear of the building for respondent's drivers and a yard area for its equipment; and that respondent's records are not commingled with those of the other two companies. The witness testified that both Premier Marble and Premier Limestone employ respondent to transport their products and that respondent engages subhaulers in connection with this transportation and pays them 15 percent less than the minimum rates. In addition, respondent withholds transportation taxes from the amount paid to subhaulers.

The representative further testified that he made photostatic copies of freight bills, invoices for freight charges, statements to subhaulers and supporting documents covering 21 shipments and that they are all included in Exhibit 1. He stated that the consignee shown on each of the freight bills in Parts 17, 18 and 20 of Exhibit 1 requested respondent to furnish an extra man to assist with unloading and that the time required to unload each of

the three shipments was one hour. The witness further testified regarding the precise location of the origin of certain of the shipments included in Exhibit 1.

A rate expert of the Commission staff testified that he took the set of documents which are included in Exhibit 1 and formulated Exhibit 2, which shows the rate and charge assessed by the respondent, the minimum rate and charge computed by the staff, the amount paid to the subhauler and the difference between the minimum charge and the amount paid to the subhauler for the transportation covered by each freight bill in Exhibit 1. The witness pointed out that although no undercharge resulted, he did not agree with respondent's method of rating the freight bills in Parts 17, 18 and 20. He explained that for each of the three shipments, the rate assessed by respondent for the transportation was below the minimum and an accessorial charge assessed by it for the helper provided to assist with the unloading was above the minimum. With the exception of several minor undercharges, the witness stated, respondent assessed the minimum rate and charge for the transportation covered by the other parts. He testified that the total difference between the amounts paid the subhauler and the minimum charges for the transportation represented by the 21 parts was \$588.47.

Testimony and evidence on behalf of respondent was presented by four witnesses.

The secretary (Dorothy Meecham) and the treasurer (Ivan D. Meecham) of respondent testified that respondent corporation was formed June 14, 1961 at the suggestion of Ivan D. Meecham; that the predecessor company, Meecham Trucking, was entirely owned by the

Meechams; that Meecham Trucking commenced hauling for Premier Marble and Premier Limestone in 1958 and used subhaulers in connection with this transportation which accounted for 50 percent of their business; and that Meecham Trucking withheld a percentage of the minimum transportation charges paid to the subhaulers. The witness stated that the equipment acquired by respondent from Meecham Trucking has been replaced and additional new equipment has been purchased; that respondent hauls for approximately 57 accounts each year in addition to the shippers involved herein; that respondent uses subhaulers to transport the products of its shippers, including Premier Marble and Premier Limestone, when its own equipment is not available and withholds 15 percent from the minimum charge paid to the subhaulers to cover billing and other costs. In explaining the subhaul costs, they pointed out that respondent regularly engages two subhaulers who are allowed to park their equipment at respondent's terminal and use its shop equipment at no charge and sells fuel to them at less than retail price. The witnesses testified that no part of the 15 percent retention is paid back to Premier Marble or Premier Limestone and that the president of respondent (Glenn R. Watson), who is also the president of Premier Marble and Premier Limestone, takes no active part in the management of respondent and receives no salary although he does receive a retainer of \$400 per month as respondent's attorney.

In support of their statement that respondent is entirely independent from Premier Marble and Premier Limestone, the secretary and the treasurer testified as follows: Respondent has its own letterhead stationery, insurance agent, telephone listing, bank

account and office in a room at the rear of the warehouse building; all of respondent's records are stored in its office except for current records that are being worked on by the bookkeeper of Premier Limestone who is paid by respondent for this service; respondent makes its own credit arrangements; although respondent's checks can be signed by either its president or vice president, they require a second signature of either its secretary or treasurer, neither of whom have any interest whatsoever in either Premier Marble or Premier Limestone; the operations of respondent are supervised by its treasurer.

With respect to the shipments covered by Parts 17, 18 and 20 of Exhibit 1, respondent's treasurer testified that the helper furnished to assist with the unloading was not requested by either the shipper or receiver. He stated that the helper was provided for the carrier's own convenience. For this reason, he alleged, the minimum rate tariff does not require that an unloading charge be assessed.

Respondent's bookkeeper, who is an employee of Premier Limestone, testified that respondent pays her employer \$250 per month for this service. She introduced several exhibits which showed that from June 1961 to March 1964, transportation performed by subhaulers accounted for 31 percent of respondent's gross income and transportation performed with its own equipment accounted for the remaining 69 percent; for the same period, 48 percent of the tonnage hauled for Premier Marble and 31 percent of the tonnage hauled for Premier Limestone was transported on respondent's own equipment and subhaulers transported the balance of the tonnage for

both shippers. She stated that there is no connection between either Premier Marble or Premier Limestone and respondent. The witness also pointed out that the several undercharges shown in Exhibit 2 have been billed and collected.

The president of respondent testified that he has no particular knowledge of respondent's business and does not participate in its day-to-day operations; that his only contact with respondent has been to attend several meetings of the board of directors which were called to determine whether new equipment should be purchased and to arrange for the necessary bank loans; that respondent should not be penalized by being required to pay sub-haulers 100 percent of the minimum rates in connection with transportation performed for either Premier Marble or Premier Limestone merely because he owns the two shippers and a 50 percent interest in respondent.

A petition for a proposed report was filed by respondent prior to the submission of this matter.

Discussion

The record establishes that Glenn R. Watson owns 100 percent of both Premier Marble and Premier Limestone and 50 percent of respondent; that Glenn R. Watson is the president and a director and Donald M. Gustafson is the vice president and also a director of each of the three companies; and that respondent pays subhaulers engaged by it to transport the products of Premier Marble and Premier Limestone less than the applicable minimum charges.

In support of its contention that there is no connection or relationship whatsoever between respondent and either Premier

Marble or Premier Limestone, respondent introduced evidence to the effect that Glenn R. Watson does not participate in the day-to-day management of respondent and receives no salary from it; that respondent is operated as a separate company; and that no part of the 15 percent of minimum charges retained by respondent in connection with transportation of the property of Premier Marble or Premier Limestone by subhaulers is returned to either shipper or Glenn R. Watson. Respondent admits, however, that Glenn R. Watson does participate in board of director meetings of respondent involving policy matters and also that he does receive a monthly retainer as respondent's attorney.

It is apparent that Glenn R. Watson, as the president, director and owner of one-half interest of respondent, is in a position to exert substantial influence on the management of respondent. Furthermore, it is obvious that he, as the president, director and sole owner of Premier Marble and Premier Limestone, receives the benefit of the reduced transportation charges in issue. Whether or not the 15 percent retained by respondent, or any part of it, is remitted directly to Glenn R. Watson or the two shippers owned by him is of no consequence. The significant fact here, as in the Commission Investigation of A. & J. Trucking,^{1/} is that the profit that respondent would receive as alleged prime carrier would ultimately be divided between both owners on a 50 percent each basis. The effect of this arrangement is that Glenn R. Watson has obtained transportation of the products of his two companies at less

^{1/} Decision No. 65310, dated May 1, 1963, in Case No. 7399, 60 Cal. P.U.C. 826.

than minimum rates. In this regard, Section 3668 of the Public Utilities Code provides that it is unlawful for any highway permit carrier to allow any corporation or person to obtain transportation of property at less than the minimum prescribed by the Commission. The word "device" in Section 3668 is to be interpreted so as to give the broadest possible protection to the minimum rate structure and includes any arrangement whereby a person or corporation obtains transportation at less than minimum rates.

In issuing operating permits, where it appears that there is an affiliation between carrier and shipper by reason of common ownership, management or control, it has been the Commission's policy to specify in such permits that not less than the applicable minimum rates shall be paid by such carrier to subhaulers engaged to carry the property of the affiliated company.^{2/} A similar restriction in respondent's operating authority will be imposed herein.

There remains for discussion the question of whether the unloading charge shown in Parts 17, 18 and 20 of Exhibit 2 is required. Item 140 on Seventeenth Revised Page 19 of Minimum Rate Tariff No. 2 provides that the accessorial charge for a helper to assist with unloading shown in Item 145(a) of the tariff need be assessed only when such service is furnished at the shipper's or receiver's request or order. According to respondent's treasurer this service was not requested by either. In the circumstances, no charge need be assessed for the helper.

^{2/} Investigation of J. & V. Trucking Co., Decision No. 63227, dated February 6, 1962, in Case No. 6567, 59 Cal. P.U.C. 337, 339.

Findings and Conclusions

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 19-38070 and City Carrier Permit No. 19-41434.

2. Respondent was served with appropriate tariffs and distance tables.

3. There exists such unity of ownership, interest and control between Premier Marble and Premier Limestone, as shippers, and respondent, as carrier, to warrant disregard of their separate entities for the purpose of enforcing the rates prescribed by the Commission.

4. The sole ownership of both Premier Marble and Premier Limestone by Glenn R. Watson coupled with a 50 percent ownership of respondent is such an arrangement that when respondent uses other carriers as subhaulers to transport property of either Premier Marble or Premier Limestone and pays said subhaulers less than the minimum rates it is a device by means of which Section 3668 of the Public Utilities Code is violated.

5. The subhaulers referred to in Finding No. 4 were in fact prime carriers who were paid less than the minimum rates established by the Commission.

6. Neither the consignor nor the consignee of the shipments covered by Parts 17, 18 and 20 of Exhibits 1 and 2 requested the services of the helper provided to assist with the unloading of each shipment. Therefore, no charge need be made for said service.

7. After eliminating the unloading charges referred to in Finding No. 6, respondent paid other highway carriers engaged as subhaulers \$572.87 less than the minimum rates prescribed in Minimum Rate Tariff No. 2 in the instances as set forth in Exhibit 2.

8. The several minor undercharges shown in Exhibit 2 have been billed and collected by respondent. Respondent is cautioned to take the necessary steps to prevent such rating errors in the future.

9. A proposed report in this proceeding is not necessary.

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

1. Respondent violated Section 3668 of the Public Utilities Code and should pay a fine in the amount of \$500.

2. The operating authority issued to respondent should be amended to provide that when respondent engages other carriers to transport the property of either Premier Marble or Premier Limestone, said other carriers shall be paid the lawfully prescribed minimum rate for such transportation.

3. The petition by respondent requesting that a proposed report be issued in this proceeding should be denied.

The order which follows will direct respondent to review its records relating to all transportation including the transportation referred to herein, performed in behalf of either Premier Marble or Premier Limestone wherein respondent employed other carriers to effect such transportation between September 1, 1962, and the effective date of this order, and to promptly pay to such other carriers the difference between the lawful minimum rates and charges applicable to such transportation and the amount previously paid to such other carriers. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent to comply with this directive and the results thereof. If

there is reason to believe that respondent has not been diligent, or has not taken all reasonable measures to comply with this directive, 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. Premier Transport, a corporation, shall pay a fine of \$500 to this Commission on or before the twentieth day after the effective date of this order, and shall cease and desist from permitting Premier Marble Products, a corporation, and Premier Limestone Products, a corporation, from obtaining transportation of property between points within this State at rates less than the minimum rates established by the Commission.
2. Premier Transport shall review its records of all transportation performed for Premier Marble Products and Premier Limestone Products, or the customers and suppliers of either, wherein purported subhaulers were used to perform the actual transportation between September 1, 1962 and the effective date of this order. Premier Transport shall then pay to such furnishers of transportation the difference between the lawful minimum rate and charge applicable to such transportation and the amount previously paid to such furnishers of transportation ostensibly as subhaulers.
3. Within ninety days after the effective date of this order, Premier Transport shall complete the examination of records required by paragraph 2 of this order and file with the Commission

a report setting forth the lawful minimum rate and charge for the transportation performed by the purported subhaulers for Premier Marble Products and Premier Limestone Products, or the customers and suppliers of either, and the amount paid to said purported subhaulers.

4. Within one hundred twenty days after the effective date of this order, Premier Transport shall remit to the purported subhaulers who furnished the transportation performed for Premier Marble Products and Premier Limestone Products, or the customers and suppliers of either, the difference between the lawful minimum rate and charge for such transportation and the amount paid to said purported subhaulers.

5. On the effective date of this decision, the Secretary of this Commission is directed to cause to be amended Radial Highway Common Carrier Permit No. 19-38070 and City Carrier Permit No. 19-41434 issued to Premier Transport, by prohibiting Premier Transport, whenever it engages other carriers in connection with the transportation of property for Premier Marble Products and Premier Limestone Products, or the customers or suppliers of either, from paying such other carriers less than the applicable minimum rates established by the Commission.

6. The petition of Premier Transport for a proposed report is denied.

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 15th day of DECEMBER, 1964.

 President
[Handwritten Signature]

[Handwritten Signature]

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 Commissioners

We would grant the request for a proposed report.

*George L. Trover
Friedrich B. Holhoff*