

ORIGINAL

Decision No. 68623

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates
and practices of WALNUT TRUCKING
COMPANY, INC., a corporation, and
HARRY D. RILEY, JR., an individual,
doing business as RILEY AND SON
TRUCKING CO.

Case No. 7897
(Filed May 12, 1964)

William L. Thomas and David R. Rydberg,
for Walnut Trucking Co., Inc.;
and Harry D. Riley, Jr., in
propria persona, respondents.
Lawrence O. Garcia and F. J. O'Leary,
for the Commission staff.

O P I N I O N

By its order dated May 12, 1964, the Commission instituted an investigation into the operations, rates and practices of Walnut Trucking Co., Inc., a corporation (hereinafter referred to as Walnut), and Harry D. Riley, Jr., an individual, doing business as Riley and Son Trucking Co. (hereinafter referred to as Riley). The purpose of the investigation of Walnut is to determine whether Walnut permitted Ford Wholesale Co., a corporation (hereinafter referred to as Ford), 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, and whether Walnut charged and collected a lesser sum for transportation than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto in violation of Sections 3664, 3667 and 3737 of the Code. The purpose of the investigation

of Riley is to determine whether Riley should be ordered to collect the difference between the amount paid to Riley by Walnut for the transportation of property for Walnut as a subhauler and the applicable rates and charges prescribed for said transportation by Minimum Rate Tariff No. 2 and supplements thereto for prime carriers.

Public hearing was held before Examiner Mooney at Los Angeles on July 28, 1964, on which date the matter was submitted.

The main issue in this case is whether Walnut and Ford are so united in interest, management and control as to make the use by Walnut of purported subhaulers (including Riley), who receive less than the minimum rates for transportation of property of Ford, a device by which Ford obtains transportation at rates less than those established by the Commission in Minimum Rate Tariff No. 2 and supplements thereto.

It was stipulated that Walnut was issued Radial Highway Common Carrier Permit No. 19-51335; that Riley was issued Radial Highway Common Carrier Permit No. 30-3282; and that the photostatic copies of shipping documents in Exhibit 1 are true and correct copies of documents in Walnut's files. The Commission's records show that both Walnut and Riley were served with Minimum Rate Tariff No. 2 and Distance Table No. 4 and all corrections and supplements thereto.

Walnut's terminal is located at 4429 North Baldwin Avenue, El Monte, California. Walnut operates eight tractors and 15 trailers. Its gross revenue for the year ending March 31, 1964, was \$202,848.31.

Ford is located at the same address occupied by Walnut. According to the record, the officers, directors and shareholders

of Walnut and Ford are as follows: William L. Thomas is the president, the treasurer and a director of both corporations and owns 50 percent of the shares of each; David R. Rydbom is a vice president, the secretary and a director of both corporations and owns 50 percent of the shares of each; Frank Cosso is a vice president, the controller and a director of Ford; and John Darrow is a director of Ford.

A Commission representative testified that on June 10, 13 and 16, 1963, September 25, 1963, and December 20, 1963, he visited Walnut's terminal and reviewed its records. He stated that Walnut employs eight drivers and a general manager who is also the dispatcher; that Walnut's two officers are also on the payroll of Ford; that the accounting, bookkeeping and rating functions of Walnut are performed by two employees of Ford (Frank Cosso and Pat Singer); and that Walnut pays Ford for this service and also an additional sum as rental for the terminal facilities.

The representative further testified that he made photostatic copies of freight bills, subhaulers' documents, checks and statements to subhaulers and supporting documents covering 21 shipments of roofing materials and that they are all included in Exhibit 1. He stated that his personal observation of the following points of destination shown in Exhibit 1 disclosed that they are not served by rail facilities: Randall Roof, 529 East Valley, San Gabriel (Parts 1 and 5); Del Webb Sun City Tract on Highway 395, six miles southeast from the mileage basing point of Perris (Parts 2 through 4 and 6 through 16); San Marino Roofing, Hellman and Del Mar, South San Gabriel (Part 18); Ford Wholesale Company, 4429 North Baldwin, El Monte (Parts 18 and 20); and Lee Roofing Company, Mount Vernon Street, San Bernardino (Part 21). The witness further

testified that all of the shipments included in Exhibit 1 were transported by subhaulers.

A rate expert of the Commission staff testified that she took the set of documents which are included in Exhibit 1 together with the supplemental information testified to by the representative and formulated Exhibit 2, which shows the rate and charge assessed by Walnut, the minimum rate and charge computed by the staff and the amount of undercharge for the transportation covered by each freight bill in Exhibit 1. The undercharge shown for each part is the difference between the amount paid to the subhauler, which is ten percent less than the charge assessed by Walnut, and the minimum charge. The witness explained that the ten percent deduction is shown on the photostatic copies of the statements attached to Walnut's checks to subhaulers included in Exhibit 1. According to Exhibit 2, Walnut, in addition to withholding the ten percent, assessed incorrect alternative rail rates and did not assess off-rail charges at destination on the shipments covered by Parts 1 through 16. The rate expert stated that although some of the shipments in Exhibit 2 were transported within a two-day period, none of them could be combined and rated as multiple lot shipments because of noncompliance with the documentation requirements of Item No. 85 of Minimum Rate Tariff No. 2.

The president of Walnut testified as follows: the manufacturers of roofing material prepay freight charges; prior to 1959, a buyer could pick up roofing material from a manufacturer's plant in proprietary equipment and receive a credit in the amount of the for-hire transportation charge to destination; some of the buyers were claiming that the material was to be used at a destination beyond where it was in fact used and were thereby receiving an

allowance in excess of the for-hire transportation charge to the point of use; to eliminate this problem, the manufacturers mutually agreed in 1959 that material could be picked up at their plants by for-hire carriers licensed by the Public Utilities Commission, only; Walnut was incorporated and commenced operating in 1959 for the sole purpose of hauling roofing material for Ford from the manufacturers. The witness pointed out that Walnut is listed in the El Monte telephone book.

Copies of Walnut's subhaul agreements with Riley (who subhauled the transportation covered by Parts 1 through 16 of the staff exhibits) and with Wayne Osmonson (who subhauled the transportation covered by Parts 17 through 21 of the staff exhibits) were introduced as exhibits by the president of Walnut. They show that Walnut withheld ten percent from transportation charges as a subhaul allowance from Riley, commencing November 1, 1962 (Exhibit 3) and from Osmonson, commencing December 1, 1962 (Exhibit 5) and that the amount withheld as a subhaul allowance from both Riley and Osmonson was increased to 15 percent on July 1, 1963 (Exhibits 4 and 6). Harry D. Riley, Jr. testified that the transportation he performed for Walnut under the agreements was as a subhauler and that Walnut need not pay him the minimum rate for subhaul transportation.

Findings and Conclusions

After consideration the Commission finds that:

1. Walnut operates pursuant to Radial Highway Common Carrier Permit No. 19-51335 and Riley operates pursuant to Radial Highway Common Carrier Permit No. 30-3282.
2. Both Walnut and Riley were served with appropriate tariffs and distance tables.

3. William L. Thomas and David R. Rydbom are officers and directors of Ford and Walnut and each owns a 50 percent interest in both corporations.

4. There exists such unity of ownership, interest and control between Ford, as shipper, and Walnut, as carrier, to warrant disregard of their separate entities and to consider Walnut to be the alter ego of Ford for the purpose of enforcing the rates prescribed by the Commission.

5. Walnut engaged other carriers (including Riley) as purported subhaulers to transport property of Ford and paid said purported subhaulers less than the applicable minimum rates.

6. The purported subhaulers referred to in Finding 5 were in fact prime carriers who were paid less than the minimum rates established by the Commission.

7. The staff ratings on the 21 parts in Exhibit 2 are correct.

8. Walnut paid other carriers (including Riley) engaged as purported subhaulers \$1,635.23 less than the minimum rates prescribed in Minimum Rate Tariff No. 2 in the instances set forth in Exhibit 2.

9. Riley collected less than the applicable minimum rates for transportation performed in behalf of Ford as a purported subhauler for Walnut.

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

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

2. Riley violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

The order which follows will direct Walnut to review its records relating to all transportation, including the transportation referred to herein, performed in behalf of Ford, or the customers or suppliers of Ford, wherein Walnut employed other carriers to effect such transportation between March 1, 1963 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 Walnut to comply with this directive and the results thereof. If there is reason to believe that Walnut 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.

Harry D. Riley, Jr., is placed on notice that charging, demanding, collecting or receiving less than the applicable rates and charges prescribed by Minimum Rate Tariff No. 2 and corrections and supplements thereto for transportation performed by him as a prime carrier for Ford Wholesale Co. or the customers or suppliers of Ford Wholesale Co. in the future will not be tolerated.

O R D E R

IT IS ORDERED that:

1. Walnut Trucking Co., Inc., 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 Ford Wholesale Co., a corporation, from obtaining transportation of property between points within this State at rates less than the minimum rates established by the Commission.

2. Walnut Trucking Co., Inc. shall review its records of all transportation performed for Ford Wholesale Co. wherein purported subhaulers were used to perform the actual transportation between March 1, 1963 and the effective date of this order. Walnut Trucking Co., Inc. 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. Harry D. Riley, Jr., shall review his records relating to all transportation wherein he was engaged by Walnut Trucking Co., Inc. to transport property in behalf of Ford Wholesale Co. between March 1, 1963 and the effective date of this order, for the purpose of ascertaining the lawful minimum rate for such transportation, and shall take such action, including legal action as may be necessary, to collect the difference between the lawful minimum rates and the amounts he received for such transportation.

4. Within ninety days after the effective date of this order, Walnut Trucking Co., Inc. shall complete the examination of records required by paragraph 2 of this order and shall file

with the Commission a report setting forth the names of the purported subhaulers used to perform transportation for Ford Wholesale Co. and the amount originally paid to each, the further amount found due to each, and any amount subsequently paid to each.

5. Within ninety days after the effective date of this order, Harry D. Riley, Jr., shall complete the examination of his records required by paragraph 3 of this order and shall file with the Commission a report setting forth all differences found pursuant to that examination.

6. In the event undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, Harry D. Riley, Jr., 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.

7. On the effective date of this decision, the Secretary of the Commission is directed to cause to be amended Radial Highway Common Carrier Permit No. 19-51335 issued to Walnut Trucking Co., Inc., by prohibiting Walnut Trucking Co., Inc., whenever it engages other carriers in connection with the transportation of property for Ford Wholesale Co. or the customers or suppliers

of Ford Wholesale Co. from paying such other carriers less than the applicable minimum rates established by the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondents. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 16th day of FEBRUARY, 1965.

Fredrick B. Holbrook
President

George J. Hoover

Augusta

William L. Bennett
Commissioners