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ORIGINAL

Decision No. 68654

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
IMPERIAL TRUCK LINES, INC., a)
corporation, for authority to)
deviate from certain provisions)
of General Order No. 84-E.)

Application No. 46961
(Filed September 4, 1964)

Carl H. Fritze, for applicant.
George L. Hunt, for the Commission staff.

O P I N I O N

Imperial Truck Lines, Inc., a California corporation, operating as a highway common carrier of general commodities between points in California, seeks authority to deviate from the requirements of paragraph 7(d) of General Order No. 84-E.

A public hearing in this matter was held in Los Angeles before Examiner Gagnon on November 6, 1964, at which time the matter was submitted subject to a late-filed exhibit, due on or before November 30, 1964. The exhibit was received November 19, 1964 and made a part of the record as Exhibit No. 4. Evidence in support of the sought authority was presented by applicant's president. The Commission staff assisted in the development of the record. The granting of the application was not opposed.

Paragraph 7(c) of General Order No. 84-E provides as follows:

"Not accept checks or drafts (other than certified checks, cashier's checks, or money orders) in payment of C.O.D. charges unless authority has been received from the consignor."

The aforementioned provision of General Order No. 84-E is also reflected in applicant's highway common carrier tariffs. This is in accordance with the requirements of paragraph 8 of the general order.^{1/}

Applicant seeks authority to deviate from the provisions of paragraph 7(d) of General Order No. 84-E so as to allow acceptance of checks or drafts (other than certified checks, cashier's checks, or money orders) in payment of C.O.D. charges without prior authority being received from the consignor.

The president of Imperial Truck Lines, Inc., presented testimony concerning the reasons set forth in the application in justification of the sought relief. The witness also clarified for the record the specific authority requested. He stated that applicant desired to accept company checks or drafts (other than personal checks) in payment of C.O.D. charges not exceeding \$500 without receiving prior authority from the consignor. This would be in addition to the acceptance of the other forms of C.O.D. payments currently authorized under the general order.

The record shows that applicant handles approximately 600 shipments per day, which includes a substantial number of less-truckload shipments. Applicant's Exhibit No. 3 contains a tabulation of some 60 C.O.D. shipments and collections handled

^{1/} Local, Joint, and Proportional Freight and Express Tariff No. 111, Cal. P.U.C. No. 15, Item No. 200; and Local, Joint and Proportional Freight and Express Tariff No. 109, Cal. P.U.C. No. 13, Item No. 140, Western Motor Tariff Bureau, Inc., Agent.

by Imperial Truck Lines, Inc., during the week ending October 23, 1964, and is alleged to be representative of the carrier's C.O.D. experience. It appears that only eight of the shipments listed weighed over 500 pounds and thirty weighed 100 pounds or less. The amount of the C.O.D. charges did not exceed \$500 in all but a few instances. A total of \$7,883 in C.O.D. charges were collected for the test week.^{2/}

In further justification of the sought relief, the president of applicant testified that it was not practical under their particular operations to obtain prior approval from various shippers to accept checks, other than certified checks, money orders or cashier's checks. In this connection applicant noted that in the Los Angeles area alone it serves approximately 9000 shippers and that while it accepts C.O.D. shipments throughout its system, the majority of such shipments are delivered to points within the Imperial and Coachella Valleys. The applicant further testified that the first indication it has of a C.O.D. shipment is when the driver makes his initial pick up. Applicant's witness further explained that freight is frequently tendered at points other than the consignor's principal place of business. For example, the witness referred to shipments of electrical appliances picked up at shipper's warehouse in California with instructions to make C.O.D. remittance to a consignor located outside of California.

^{2/} Imperial Truck Lines, Inc., Annual Report for the year ending December 31, 1963, indicates applicant held in its accounts unremitted C.O.D.s in the amount of \$26,882 at the beginning of the fiscal period and \$17,480 at the close of the fiscal period. This would appear to be indicative of the approximate level of applicant's C.O.D. financial responsibility at any given time.

The applicant further testified concerning the urgency for expeditious delivery of certain C.O.D. shipments of agricultural or refrigeration equipment in the Imperial or Coachella Valley areas. For example, the applicant's witness testified that the carrier's Indio terminal frequently opens at 2:30 a.m. in order to permit a farmer to pick up an emergency C.O.D. shipment of an irrigation pump which was picked up at a local supply house with C.O.D. remittance to be paid to an eastern manufacturer. In addition, applicant asserts that its drivers are delayed in their deliveries of C.O.D. freight since they frequently must wait until consignee can obtain the necessary cash or certified check from his bank, which may be a considerable distance away and/or not open at time or day of delivery. This latter circumstance would frequently require applicant to perform redelivery service. The shippers in Imperial Valley have inquired of applicant as to the reasons why United Parcel Service and Greyhound will accept checks and freight carriers will not in connection with small lot shipments.

If the sought relief is authorized, it is applicant's intention to deposit the company checks received in payment of C.O.D. charges and make remittance to the consignor with carrier's own check pursuant to the other governing provisions of General Order No. 84-E. Applicant is aware of the fact that it would assume full responsibility for checks or drafts received in payment of C.O.D. charges under the sought relief. Applicant states it would exercise an experienced businessman's prudence in accepting company checks. It is further alleged by applicant that it

is financially responsible to assume the risk involved and that it has had no unsatisfactory experience with company checks in other phases of its operations.^{3/}

In response to cross-examination by the staff, applicant's president stated that no attempt was ever made to obtain prior written authority from consignors to accept company checks in payment of C.O.D. charges. The witness was of the opinion that such effort would be impractical in view of the large number of shippers involved. The staff also inquired as to whether applicant had ever considered forwarding C.O.D. collections, received in the form of checks, directly to the consignor without processing such checks through the carrier's records. The witness stated that this method was followed on occasion, but the practice was not feasible with respect to those consignees issuing a single check in payment of both the C.O.D. and freight charges.

In view of the applicant's alleged competition with United Parcel Service and Greyhound, the Commission staff inquired as to whether applicant would be willing to have a rule in his tariff similar to the rule under which United Parcel operates. In view of applicant's unfamiliarity with the tariff rule in question, the staff directed the applicant's attention to the provision in Item No. 190 of United Parcel Service Local Parcel Tariff, Cal. P.U.C. No. 16 which reads as follows:^{4/}

^{3/} Applicant's president submitted Exhibits Nos. 1 and 2 of record, containing financial statements, for the purpose of showing the carrier's capacity to assume consignor's financial responsibility.
^{4/} By Decision No. 66574, dated January 7, 1964, in Application No. 45735 (unreported) United Parcel Service was granted an exemption from the provisions of paragraph 7(d) of General Order No. 84-E.

"Checks -- Acceptance of: Unless instructions to collect cash only are written on the C.O.D. tags accompanying C.O.D. packages, the Carrier will accept checks from consignees in payment of C.O.D.'s. Such checks, accepted at the risk of the consignor, will be transmitted to the consignor together with the Carrier's own check for amounts collected in cash."

Applicant requested additional time to study the aforementioned tariff provision in the light of its operation and subsequently inform the Commission as to its conclusions in the form of a late-filed exhibit. The request was granted.

The relief originally sought by applicant, if authorized, would permit Imperial Truck Lines, Inc., to assume a financial responsibility for the successful execution of commercial transactions in which it has no financial interest or control over the amount of risk it would assume. Applicant's amended proposal, as set forth in late-filed Exhibit No. 4, is like that of United Parcel Service previously referred to herein. In one significant respect it differs from the United Parcel Service procedures in that the latter provide a distinct block on its shipping documents where the shipper may indicate that checks are not acceptable. Applicant's proposal, further amended to include a requirement for a space on its shipping document where shippers could check if cash only is acceptable on C.O.D. shipments, would accord applicant the same basic relief as originally requested without the assumption of any financial responsibility other than that of a highway common carrier of property and would accord shippers a ready and practical means of protecting their interests in appropriate cases.

The amended sought relief, expressed in the form of a proposed tariff rule, is as follows:

Proposed Tariff Rule
(Exhibit No. 4)

Checks acceptance of: Unless instructions to accept cash, certified checks, cashier's checks, or money orders, only in payment of C.O.D. charges are written on the bill of lading, Imperial Truck Lines, Inc. may accept company checks from consignees in payment of C.O.D.'s for \$500.00 or less. Such checks, accepted at the risk of the consignor, will be transmitted to the consignor together with the check of Imperial Truck Lines, Inc. for amounts collected in cash.

The Commission recognizes the fact that in the course of daily business transactions, it is customary to execute regular commercial company checks in payment of financial obligations. Issuance of certified checks, cashier's checks, or money orders appears to be the exception rather than the rule. Moreover, applicant's objections to the operating difficulties it is experiencing under the existing provision of paragraph 7(d) of General Order No. 84-E appear to be well founded.

The Commission finds that applicant should be granted relief from paragraph 7(d) of General Order No. 84-E to the extent set forth in the ensuing order and that such relief is justified.

O R D E R

IT IS ORDERED that:

1. Imperial Truck Lines, Inc., a corporation, is authorized to deviate from the provisions of General Order No. 84-E to the

extent that it may (a) establish the following tariff provisions in its common carrier tariffs:

Checks -- Acceptance of: Imperial Truck Lines, Inc. will accept checks from consignees, payable to the consignor or payee designated by consignor, in payment of C.O.D. charges in amounts of \$500 or less, except when the consignor issues written instructions to Imperial Truck Lines, Inc. to accept only cash, certified checks, cashier's checks, or money orders in payment of C.O.D. charges. Such checks, which shall be accepted at the risk of the consignor, will be transmitted to the consignor or to the persons designated by the consignor, together with an Imperial Truck Lines, Inc. check for amounts collected in cash promptly and in no event later than ten days after delivery to the consignee, unless consignor instructs otherwise in writing.

and (b) provide on its shipping documents a statement which shippers may check to indicate that payment of C.O.D. amounts are acceptable only in cash, certified checks, cashier's checks or money orders.

2. Tariff publications authorized to be made as a result of the order in paragraph 1 above may be made effective not earlier than ten days after the effective date hereof and on not less than ten days' notice to the Commission and the public.

3. In all other respects Application No. 46961 is denied. The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 24th day of FEBRUARY, 1965.

Frederick B. Holcomb
President

George T. Prover

William W. Bernard
Commissioners