

ORIGINAL

Decision No. 68846

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of STANDARD
FREIGHT LINES, a California
corporation.

Case No. 7896

Bertram S. Silver, for respondent.
David M. Dooley and Paul de Bruyer, for
Rhodes & Jamieson, Ltd., interested party.
Elinore Charles and George T. Kataoka, 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 Standard Freight Lines, a corporation.

Public hearings were held before Examiner Daly on September 1, 1964, and December 1, 1964, at San Francisco with the matter being submitted on briefs since filed and considered.

Respondent presently conducts operations pursuant to a radial highway common carrier permit, a highway contract carrier permit and a city carrier permit. It maintains an office and terminal in San Leandro, California. It owns and operates 7 power and 71 trailer units and employs 5 individuals. At times it engages between 20 and 30 subhaulers. For the last two quarters of 1963 and the first two quarters of 1964, respondent realized a gross revenue in the amount of \$1,098,180. The major portion of respondent's operations is in the transportation of rock, sand and gravel, which is performed through the use of subhaulers. It is the transportation of aggregates in dump trucks that is the

subject of this investigation. Such transportation is governed by Minimum Rate Tariff No. 7 and it was stipulated that said tariff was served upon respondent.

A representative of the Commission's field section visited respondent's place of business and checked its records for the period from February 5, 1963 through September 30, 1963, inclusive. On a subsequent visit he checked respondent's records for the month of January, 1964. The underlying documents relating to 28 shipments were taken from respondent's files and submitted to the License and Compliance Branch of the Commission's Transportation Division. Based upon the data taken from said shipping documents a rate study was prepared and introduced in evidence as Exhibit 6. Said exhibit is composed of 28 parts, which represents each of the shipments considered. It reflects undercharges in the amount of \$8,464.60.

When establishing the minimum rates for dump truck operators the Commission found that those operating in the southern part of the State followed a tonnage and distance rate, whereas those operating in the northern part of the State predominantly followed an hourly rate. As a result, Minimum Rate Tariff No. 7 provides for hourly rates in the north and tonnage rates in the south, unless the shipper by advance written notice elects otherwise. To a large extent the shipments herein considered have as their main issues: (1) whether the points of origin or destination are on-rail; (2) whether the notice of a written election to assess tonnage has been issued; and (3) where the tonnage rates were elected whether they were applied on the correct distance between points of origin and destination. Prior to checking the distances between points it was determined that the odometer of the state car used had been calibrated.

Parts 1-16

These shipments for the most part originated at or were destined to the plants of Henry J. Kaiser. According to the staff each of these shipments constituted a violation of the applicable minimum rates in that respondent failed to assess the applicable off-rail charges. The points of origin which the staff contends are off-rail are the Kaiser plants located at Niles and Felton. The only point of destination which the staff contends is off-rail is the Kaiser plant located at Berkeley.

The Kaiser Company recently established a second plant at Felton and it is admittedly off-rail. Respondent had previously performed transportation from the first plant, which is admittedly on-rail, and it continued using the on-rail rate applicable to the old plant until it became aware that the new plant is off-rail, at which time it assertedly included an off-rail charge on subsequent shipments.

The staff witness testified that the Berkeley plant was once served by rail, but because of safety reasons the rail facilities have not been used by the railroad for the past two years.

The plant at Niles is admittedly off-rail.

Parts 17-18

The shipments considered moved from the Kaiser plant at Radum to construction work being performed on the extension of the MacArthur Freeway at a point called Sybil Avenue in San Leandro. Although the Kaiser Company elected to use the tonnage rate (Exhibit 2), the actual billing was predicated upon an hourly basis, whereby the number of hours was fictitiously determined. Even if respondent had applied the agreed tonnage rate it would

have been too low, inasmuch as it applied an 80 cents per ton rate applicable to a distance of 17.2 miles. The staff applied a tonnage rate of 84 cents per ton based upon a distance of 18.5 miles.

Part 19

The movements originated at the Kaiser plant at Radum and were transported to the MacArthur Freeway construction site located at 96th Avenue and Mountain Boulevard in Oakland. They are similar to those in Parts 17 and 18, in that respondent used an hourly rate based upon a fictitious number of hours even though the shipper had elected the tonnage rate. Here again, the staff determined the distance at 21 miles and respondent relied upon a distance of 19.7 miles.

Part 20

The four movements relating to Part 20 were transported for Rhodes & Jamieson, Ltd. (hereinafter referred to as Rhodes) from its plant in Pleasanton to the Briones Dam site. The main issue is whether the shipper executed a written election to apply the tonnage rates. Respondent's president and general manager testified that he spoke to the transportation supervisor for Rhodes and that as a result of their conversation the parties agreed to a rate of \$1.00 per ton. He was of the opinion that he had requested a letter of confirmation, which he believes he received; however, he was unable to find any such letter in respondent's records. The transportation supervisor for Rhodes, on the other hand, testified that the understanding pertained to the use of hourly rates and that no written election to use the tonnage rates was ever executed, because according to the witness, he was without authority to make such an election for his company. Respondent billed Rhodes for transporting 4,884-1/2 tons at the rate of \$1.00 per ton and said amount was accordingly paid.

With the exception of a few gravel tags, which were time stamped, respondent did not have a complete time record of the movements. The staff, therefore, applied a tonnage rate of \$1.36 per ton on the basis of 33.20 miles, which resulted in an undercharge of \$1,758.42.

Rhodes contends that inasmuch as there is no evidence of a written election the tonnage rates cannot be applied. In the absence of a complete time record it suggests that the average running time of approximately two hours be employed. The two hours average was determined by Rhodes from time records of its own equipment moving between the points involved. The company argues that if the hourly rates had been applied on the basis of an average two hour trip, the total charge would approximate the assessed \$1.00 per ton rate and no undercharge would result.

Parts 21-25

Said shipments were transported for Henry J. Kaiser from its plant at Radum to the Caldecott Tunnel construction site at Orinda. Although there was a written election to use the tonnage rates (Exhibit 4) and no time records were kept of the shipments, respondent again used an hourly rate based upon a fictitious number of hours. It is the contention of respondent that if the amount actually charged had been converted to the tonnage rate based upon its calculation of approximately 28 miles, no undercharge would have resulted. The staff, however, determined the distance at 30.7 miles. The discrepancy is attributable to the fact that respondent was stock piling at a certain point on the highway. In the beginning, respondent could dump on either side of the highway or cross over the highway at the point of stock piling. Subsequently, the California Highway Patrol required respondent to cross at the

nearest overpass, which was located two miles beyond the stock pile. This added four miles to each trip and all of the shipments covered by Parts 21 through 25 were transported over the longer distance. The staff included the additional mileage in its rating of the shipments, whereas respondent did not.

Parts 26-28

These shipments were transported for Henry J. Kaiser from its Radium plant to the MacArthur Freeway construction site at Enos Street in the City of Oakland. The parties executed a written election to use the tonnage rates (Exhibit 5). The discrepancy again was in the mileage. Respondent determined the distance at 21.9 miles and assessed a rate of 94 cents per ton, whereas the staff determined the distance at 24.3 miles and assessed a rate of \$1.05 per ton.

After consideration the Commission finds that:

1. Respondent operates pursuant to a radial highway common carrier permit, a highway contract carrier permit and city carrier permit.
2. Respondent was served with the appropriate minimum rate tariff.
3. On Parts 1 through 16 of Exhibit 6 respondent transported shipments between off-rail points and failed to assess applicable off-rail charges.
4. With respect to Parts 17, 18, and 19 of said exhibit, respondent improperly applied hourly rates, based upon a fictitious number of hours, to shipments upon which tonnage rates should have applied in accordance with the shipper's election. The amounts charged were less than the applicable tonnage rates for the distances involved.

5. Although there is conflicting oral testimony that Rhodes had executed a written election to utilize the tonnage rates on the movements involved in Part 20 of Exhibit 6, the document itself was not produced and in its absence it cannot be said that the required notice of intention to ship under Section 2 rates of Minimum Rate Tariff No. 7 was received by respondent prior to the transportation service performed (Senator Truck Service, Inc. 59 Cal. P.U.C. 777). Because complete time records were not kept proper charges under the hourly rates cannot now be determined. Respondent's failure to keep time records violates Item No. 93-A, paragraph (b) and Item No. 375 of Minimum Rate Tariff No. 7.

6. On Parts 21 through 28 of Exhibit 6, respondent applied tonnage rates based upon incorrect distances between the points involved.

All shipments herein considered were transported by sub-haulers. Item 94-C of Minimum Rate Tariff No. 7 requires that a subhauler shall be paid 95 percent of the applicable minimum rate. In all instances where undercharges have resulted respondent will be required to check its records to determine whether Item 94-C has been complied with.

Based upon the foregoing findings the Commission concludes that respondent violated Sections 3664 and 3737 of the Public Utilities Code by charging, demanding, collecting, and receiving lesser sums for transportation than the applicable charges prescribed in Minimum Rate Tariff No. 7 in the sum of \$6,706.18. Respondent should pay a fine in the amount of \$5,000.

Respondent was previously cited before this Commission in Case No. 7599, Decision No. 66192, dated October 22, 1963, and was ordered to cease and desist from operating without a permit.

The order which follows will direct respondent to review its records to ascertain all undercharges that have occurred since February 1, 1963, in addition to those set forth herein except for Part 20 of Exhibit 6. The Commission expects that when the 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 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. Standard Freight Lines shall pay a fine of \$5,000 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 February 1, 1963 to the present time, for the purpose of ascertaining all undercharges that have occurred.
3. Respondent shall review its records from February 1, 1963, to the present time and shall remit to each of the subhauliers used during this period the difference if any between the amount paid to the subhauler and 95 percent of the appropriate rate listed in Minimum Rate Tariff No. 7 and the supplements thereto.

4. Within ninety days after the effective date of this order, respondent shall complete the examination of its records required by paragraphs 2 and 3 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to the examination of its records ordered by paragraph 2 herein. The report shall also include the subhaulers by name and the amount owed to each.

5. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein except for Part 20 of Exhibit 6, 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.

6. In the event undercharges ordered to be collected by paragraph 5 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent 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. In the event any payments to be made, as provided in paragraph 3 of this order, remain unpaid one hundred twenty days after the effective date of this order, respondent shall file with the Commission on the first Monday of each month thereafter a report setting forth the action taken to pay the subhaulers and the result of each action until payments have been made 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 6th day of April, 1965.

Fredrick B. Holbrook
President

John E. ...

George T. Hoover

Angela ...

William ...
Commissioners