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ORIGINAL

Decision No. 69044

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of GARIBALDI)
TRUCKING COMPANY, a corporation.)

Case No. 7446

Ivan McWhinney, for Garibaldi Trucking
Company, respondent.
William Bricca and Frank J. O'Leary, for
Commission staff.

OPINION AFTER FURTHER HEARING

On May 19, 1964, the Commission issued its order reopening the above-entitled proceeding.

Decision No. 64879 dated February 5, 1963, in this proceeding (60 Cal P.U.C. 509), found that Garibaldi Trucking Company, a corporation, hereinafter referred to as respondent, violated Section 3664 of the Public Utilities Code by charging and collecting rates less than the minimum established in Minimum Rate Tariff No. 3-A for the transportation of livestock, and Section 3668 of the Public Utilities Code by paying improper bruised cattle claims. The decision imposed suspension or in the alternative a fine on respondent. In addition, it ordered respondent to collect the undercharges established in the decision, to review its records for the period from November 15, 1961 to February 5, 1963 for the purpose of ascertaining whether any additional undercharges had occurred during said period, to collect all undercharges and to file reports with the Commission in connection therewith.

The proceeding has been reopened for the purpose of determining whether respondent collected all of the undercharges

established by Decision No. 64879 and examined its records and collected all additional undercharges which occurred during the review period set out in the decision and whether, subsequent to said review period, respondent continued to violate Sections 3664 and 3668 of the Public Utilities Code.

The further hearing in the reopened proceeding was held before Examiner Mooney at Los Angeles on October 29, 1964, on which date the matter was submitted.

The Commission staff presented evidence that a copy of Decision No. 64879 was served on respondent on February 11, 1963. Correspondence from respondent was received by the Commission on June 13, 1963, which stated that a review of its records did not disclose any additional undercharges, and on August 16, 1963, which stated that no undercharges remained to be collected. (Exhibit 8.)

Part B of Exhibit 9 lists three undercharges resulting from unlawfully paid bruised cattle claims established by Decision No. 64879. The staff testified that said undercharges have not been collected. The aggregate of the three undercharges is \$352.26.

Exhibit 10 shows 36 instances in which respondent did not rebill and collect undercharges which occurred during the review period set out in Decision No. 64879 and five instances in which undercharges occurred subsequent to the review period. The 36 undercharges during the review period resulted from the use of incorrect constructive mileage (16 counts), unlawfully paid bruised cattle claims (16 counts), unlawfully consolidating separate shipments as a split pick-up shipment (2 counts) and failure to obtain a certified public weighmaster's certificate (2 counts). The five undercharges that occurred subsequent to the review period resulted from unlawfully paid bruised cattle claims (2 counts) and failure

to obtain a certified public weighmaster's certificate (3 counts). The aggregate of the undercharges shown in Exhibit 10 is \$5,556.87.

The president of respondent testified that all undercharges shown in Exhibit 10 were collected several weeks prior to the hearing with the exception of those resulting from bruised cattle claims unlawfully paid to Globe Packing Co. (Globe). The total amount of the undercharges alleged to have been collected is \$774.20. The witness stated that a civil action to collect the unlawfully paid bruised cattle claims was filed against Globe on October 27, 1964 (Exhibit 11).

Counsel for the Commission staff recommended that respondent be fined in the amount of \$5,000. Respondent's counsel pointed out that respondent has already paid a fine of \$3,000 imposed by Decision No. 64879. Respondent's counsel also stated that Globe has refused all demands made by respondent for payment of the unlawful bruised cattle claims, that litigation has now been commenced and that every effort will be made to effect collection.

After consideration the Commission finds that:

1. Respondent was served with a copy of Decision No. 64879 on February 11, 1963.

2. Ordering paragraphs 9, 10, 11 and 12 of Decision No. 64879 directed respondent to collect the undercharges set forth in the decision, to review its records for the period from November 15, 1961 to February 5, 1963 and collect all additional undercharges disclosed by such examination of its records, to take legal action if necessary to collect the undercharges and to file reports with the Commission in connection therewith.

3. Correspondence regarding Decision No. 64879 was received from respondent on June 13, 1963 and August 16, 1963 which stated

that a review of its records did not disclose any additional undercharges and that no undercharges remained to be collected.

4. Respondent did not collect three undercharges listed in Part B of Exhibit 9 which were established by Decision No. 64879 and totaled \$352.26.

5. Respondent charged less than the lawfully prescribed minimum rates in each of the 41 parts in Exhibit 10, resulting in undercharges in the amount of \$5,556.87.

6. The undercharges shown in Parts 1 through 36 of Exhibit 10 occurred during the review period set forth in Decision No. 64879 and referred to in Finding 2 above.

7. Respondent has collected \$774.20 of the undercharges listed in Exhibit 10.

8. A civil action for \$4,464.01 has been filed by respondent against Globe Packing Co.

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

1. Respondent has violated the provisions of ordering paragraphs 9, 10, 11 and 12 of Decision No. 64879.

2. Subsequent to Decision No. 64879, respondent has continued to violate Sections 3664 and 3668 of the Public Utilities Code.

3. Respondent should pay a fine in the amount of \$5,000.

The order which follows will direct respondent to review its records to ascertain all undercharges that have occurred since November 1, 1961 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 formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed.

O R D E R

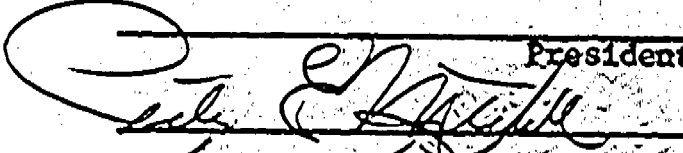

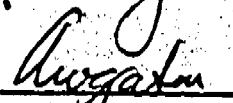

IT IS ORDERED that:

1. Respondent 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 November 1, 1961 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 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.

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 11th day of MAY, 1965.


 _____ President

 _____ George F. Hoover

 _____ Augusta

 _____ William L. DeWitt
 _____ Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.