

Decision No. 69538**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 A & A)
 TRANSPORT CO., INC., a corporation.)

Case No. 7981
 (Filed May 7, 1965)

Bertram S. Silver, for respondent.

Vaughan, Paul & Lyons by John G. Lyons
 for The Union Ice Company, interested
 party.

Lawrence Q. Garcia and F. J. O'Leary, for
 the Commission staff.

O P I N I O N

By its order dated August 18, 1964, the Commission instituted an investigation into the operations, rates and practices of A & A Transport Co., Inc.

A public hearing was held before Examiner Porter on November 17, 1964 at Los Banos and on March 3, 1965 at San Francisco at which time the matter was submitted subject to the filing of briefs. Briefs having been filed, the matter is now ready for decision.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 24-2057. Respondent has a terminal in Los Banos. It owns and operates seven tractors, five semitrailers, and two tank semitrailers. It employs five drivers, one office clerk, one mechanic, one bookkeeper, part time, and one accountant. Its operating revenues for the last two quarters of 1963 and the first two quarters of 1964 amounted to \$350,045.00. Copies of the appropriate tariff and distance table were served upon respondent.

A representative of the Commission's License and Compliance Branch visited respondent's place of business and checked its records for the period July 1, 1963 to December 31, 1963.

The staff of the Commission presented evidence related primarily to the carrier's business transactions with the Union Ice Company, a shipper.

The evidence as to Parts 1-9 of Exhibits 1 and 3 was not disputed and shows that respondent has assessed the Union Ice Company less than the applicable minimum rate for the transportation of ice.

The evidence as to Parts 10-17 of Exhibits 1 and 3 involved certain shipments of ice for the Union Ice Company originating in Salinas and eventually terminating in Huron or Coalinga. At the time that these shipments commenced, the drivers were directed only to report to the Union Ice Company facility at Firebaugh, where a separate document was cut indicating the new destination. It is the staff's contention that these were two shipments, one from Salinas to Firebaugh, the other from Firebaugh to Huron or Coalinga, and that a rating of these shipments as such would result in an undercharge.

The respondent's position is that Firebaugh was a natural stopoff point between Salinas and the other delivery towns; that trucks stop there for their own purposes, rest stop, refreshment, etc., regardless of any requirements of Union Ice Company; that neither the carrier nor the shipper intended to unload the shipments at Firebaugh; that there was no physical delivery of the shipments at Firebaugh; and that these shipments were rated properly as a single shipment and there were no undercharges.

Respondent and the affected shipper (who appeared as an interested party) contend that the term "shipment" as defined in Item 11, Minimum Rate Tariff No. 2 (MRT-2), contemplates only one

point of destination,^{1/} that is, the point of ultimate physical delivery of the ice; that since there was no physical delivery at Firebaugh, Firebaugh was not a "point of destination" and there was not a complete shipment up to that point; and that there was no complete shipment until the ice was finally delivered at Huron or Coalinga. "Point of destination" is defined in Item 10, MRT-2, as ". . . the precise location at which property is tendered for physical delivery" It is argued that the shipments here were in no sense tendered for physical delivery at Firebaugh, since all that respondent did there was to obtain final delivery instructions.

We do not agree. Respondent and the shipper disregard the fact that other shipments, not directly involved in this proceeding, were sent from Salinas to Firebaugh and were unloaded at Firebaugh. At the time such a shipment left Salinas, it was not known whether the final destination would be Firebaugh, Huron or Coalinga; delivery instructions were not given until the shipment reached Firebaugh. For all the carrier knew, when such shipments left Salinas, any one or all of them might be unloaded at Firebaugh. Under these circumstances we find that the movements originating at Salinas and transported to Firebaugh for receipt of final delivery instructions at Firebaugh were tendered for physical delivery at Firebaugh. Accordingly, that part of the journey from Salinas to Firebaugh was a complete shipment, and in the case of ice which was transported to Huron or Coalinga, that part of the journey from Firebaugh to Huron or Coalinga was a second shipment.

The remaining issue presented in the case concerns payments of \$500 a month (pro-rated at the rate of \$16.80 a day when an entire month was not involved) by the carrier to Union Ice Company for the

^{1/} There are exceptions to this definition which are not pertinent here.

alleged rental of a garage and welding tools, a parking space for trucks, the use of a bunkhouse for drivers, and space in which to place a diesel tank containing fuel, all located at the Union Ice Company facility at Firebaugh.

The staff's contention is that the so-called rental agreement constitutes a device whereby the carrier is refunding or remitting a portion of the rates or charges for shipments of ice. The evidence presented by the staff was to the effect that the agreement was not reduced to writing. The carrier did not have exclusive use of either the bunkhouse or the garage. The so-called parking area is unfenced, unmarked and rural. The staff did not present any evidence allocating or establishing the value for the use of these facilities.

The respondent presented evidence that its drivers used the beds, the showers, and toilet facilities in the bunkhouse. Respondent used the garage and welding equipment and the fuel facilities. Respondent was able to save itself deadheading equipment back and forth between Firebaugh and Los Banos. Respondent's manager testified as to the need for the facilities, the saving involved and the reasonableness of the rent.

After consideration the Commission finds that:

1. Respondent operates pursuant to a radial highway common carrier permit.
2. Respondent was served with appropriate tariff and distance table.
3. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 3, Parts 1-9, resulting in undercharges in the amount of \$221.30.

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4. The ice involved in Parts 10-17 of Exhibits 1 and 3 was tendered for physical delivery at Firebaugh. As to each of these Parts, the portion of the movement from Salinas to Firebaugh was one shipment, and the portion of the movement from Firebaugh to Huron or Coalinga was a separate shipment; they should have been rated accordingly. The resulting undercharges amount to \$1,893.97.

5. In regard to the reasonableness of the rental agreement there is not sufficient evidence before this Commission to decide this issue.

Based on the foregoing findings of fact the Commission concludes that respondent violated Section 3664 of the Public Utilities Code and should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$2,115.27.

The Commission expects that 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 \$2,115.27 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein and shall notify the Commission in writing upon the consummation of such collections.

3. In the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect them; respondent shall file with the Commission on the first Monday of each month after the end of said sixty days, 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 10th day of August, 1965.

Frederick B. Holdreiff
President
Robert E. Hatchell
Augustin
William L. Bernard

Commissioners

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.