

ORIGINAL

Decision No. 69907

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates
and practices of DENIO BROS. TRUCKING
CO., a Nevada corporation.

Case No. 8124

Martin J. Rosen, for respondent.
Elmer Sjostrom and J. B. Hannigan, for
the Commission staff.

O P I N I O N

By its order dated February 3, 1965, the Commission instituted an investigation into the operations, rates and practices of Denio Bros. Trucking Co.

A public hearing was held before Examiner Daly on April 29, 1965 at Truckee and June 7, 1965 at San Francisco. The matter was submitted on concurrent briefs since filed and considered.

Respondent presently conducts operations pursuant to a radial highway common carrier permit. Respondent has a terminal in Loyalton, California. It owns and operates four tractors and four trailers. It employs four drivers and two mechanics, and one office helper. Its total gross revenue for the year 1964 was \$74,103. Copies of appropriate tariff and distance tables were served upon respondent.

From August 24 through August 28, 1964, a representative of the Commission's field section visited respondent's place of business and checked its records for the period from January 1, 1964, through July 31, 1964, inclusive. During said period respondent transported approximately 500 shipments. The underlying documents relating to 61 shipments were taken from respondent's files and submitted to the

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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 2. Said exhibit reflects undercharges in the amount of \$1,021.76.

Parts 1 through 45 involve the transportation of dry lumber for the Long Valley Lumber Co. from either of its two mills located at Long Valley and Vinton, to the Feather River Lumber Co. located at Loyalton. The distances between the points of origin and the point of destination are less than fifty constructive miles.

According to the staff, Parts 1 through 8 constitute violations of Item 680 of Minimum Rate Tariff No. 2. Said item specifies the use of 2500 pounds per 1,000 board feet measure in lieu of actual gross weights in connection with the transportation of the type of forest products herein considered when the distance involved does not exceed 50 constructive miles. Respondent applied actual weights, which resulted in charges less than those applicable under Item 680.

On Parts 9 through 45 respondent applied a flat rate of \$32 a shipment, which the staff contends violates Item 257 of Minimum Rate Tariff No. 2. Said item provides that rates shall not be assessed upon a unit of measurement different from that in which the minimum rates are stated in the tariff. Respondent had no footage or weight records of these shipments; however, it provided the staff with an average estimated footage of 14,185 board feet per shipment. Applying the 2,500 pound weight per 1,000 board feet as provided by Item 680 of Minimum Rate Tariff No. 2 the staff arrived at a charge of \$39.01 for each shipment.

In addition to the aforementioned violations the staff contends that Parts 1, 9, 10, 11, 12, 14, 15, 17, 18 and 23 of

Exhibit 2, involved the unlawful consolidation of shipments without compliance with Item 85 of Minimum Rate Tariff No. 2. Item 85 permits the transportation of shipments in multiple lots provided certain conditions are complied with. Among these are the requirements that: (a) The entire shipment must be available for immediate transportation at the time of the first pickup; (b) a master bill of lading must be prepared by the consignor prior to the first pickup; (c) the entire shipment must be picked up within a two-day period, excluding Saturdays, Sundays and holidays. Item 85 specifically provides that if a carrier fails to comply with any of the provisions set forth each pickup shall be rated as a separate shipment. Said parts failed to comply with Item 85 in that no master bills of lading were issued. As a consequence the staff rated each pickup as a separate shipment.

Parts 46 through 56 and Part 60 of Exhibit 2 also involved multiple lot shipments. In these instances respondent relied upon letters from the consignors covering the transportation of lumber over long periods of time. In transporting these shipments respondent used the letters to cover a series of multiple lot shipments. Pickups were grouped into 24-hour periods and the multiple lot shipments rate was applied. Respondent contends that there is nothing in Item 85 that requires a master bill of lading for each two-day period. The staff accepted the letters as master bills of lading where the basic information required by Item 85 was contained therein, but applied the multiple lot rate only to those pickups made within the first two-day period. The staff also took the position that with the exception of the first two days these parts also failed to comply with the provisions of Item 85, in that the record clearly demonstrates that all of the lumber to be transported pursuant to these letters was not available for immediate transportation at the time of the first pickup.

It was stipulated that Parts 57, 58, 59 and 61 were correctly rated by the staff.

The Commission's records indicate that by Decision No. 66029 dated September 17, 1963, in Case No. 7608 the Commission found that respondent had violated MRT No. 2 in certain respects. Respondent was fined and ordered to collect undercharges.

In the instant proceeding the staff recommended a fine of \$2,500 plus a fine equal to the amount of the undercharges.

Respondent introduced evidence to indicate that it has made every effort to comply with the Commission's rules and regulations and that many of the violations herein considered were not intentional, but the result of an honest belief that the rating practices followed were lawful. To avoid such mistakes in the future respondent's president indicated that it has hired a rate expert to make certain that each shipment is properly rated; it has hired a bookkeeper and clerk to consult with the rate expert and members of the Commission staff in order to comply with the Commission's rules and regulations.

Respondent contends that the recommended fine would work a financial hardship in that a fine of \$2,500 represents a little more than one half of defendant's annual net profit.

Respondent also contends that the testimony of the staff investigator concerning conversations with respondent's officers and employees during the investigatory period and the documents taken from respondent's records should not have been received in evidence on the ground that said investigator failed to first inform respondent that the investigation could result in a quasi criminal proceeding. It is argued that the conversations and documents were improperly used by the Commission as a confession of violations (Escobedo v. Illinois, 370 US 478; People v. Dorado, 62 AC 350). This argument

is without merit. As a permitted carrier, respondent has been made subject to the regulatory jurisdiction of this Commission. Inherent in the right to operate is the duty and obligation to make full and complete disclosures of said operation insofar as they relate to the compliance or lack of compliance with the rules and regulations established by this Commission.

After consideration the Commission finds that:

1. Respondent operates pursuant to a radial highway common carrier permit.
2. Respondent was served with appropriate tariffs and distance tables.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 2, resulting in undercharges in the amount of \$1,021.76.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Section 3667 of the Public Utilities Code and should pay a fine in the amount of \$2,500, plus an amount equal to the amount of the undercharges.

The Commission expects that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges set forth in Exhibit 2. 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 \$3,521.76 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 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 2nd day of NOVEMBER, 1965.

I concur, except that the \$2,500 portion of the fine seems high in light of respondent's revenues.

George L. Grover

Fredrick C. Holdcroft
President
Walter E. Smith
Wegeler
William D. Bennett
Commissioners