

ORIGINAL

Decision No. 69908

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates
and practices of MARTIN A. ROTONDO
and ERIC J. MacDONALD, doing business
as TONDO TRUCKING.

Case No. 8084

Handler, Baker & Greene, by Daniel W. Baker
for respondents.
Berol, Loughran & Geernaert, by Bruce Geernaert,
for Lacar Enterprises, interested party.
William C. Bricca and George Kataoka, for the
Commission staff.

O P I N I O N

By its order dated December 15, 1964, the Commission
instituted an investigation into the operations, rates and practices
of Martin A. Rotondo and Eric J. MacDonald, doing business as Tondo
Trucking.

A public hearing was held before Examiner Porter on
February 25, 1965 and April 21, 1965, at San Francisco, and the
matter was submitted on the latter date.

Respondents presently conduct operations as a highway
common carrier pursuant to a certificate and as a radial highway
common carrier and city carrier pursuant to permits. Respondents'
office is in Burlingame. Their total gross revenue for the last
three quarters of 1964 and the first quarter of 1965 was \$218,517.
They operate twelve power units and eight trailers.

A representative of the Commission's License and Compliance
Branch visited respondents' place of business and checked their
records for the period January 1 through July of 1964.

The staff of the Commission presented evidence which showed that respondents transported some ten shipments a day for Lacar Enterprises. Boxes of merchandise were transported for the shipper, and described on the bills of lading as miscellaneous hardware and rated as a third class item. Investigation disclosed that the boxes included plastic articles, an item which takes a rating of 2-1/2 times first class. The transportation representative selected at random documents relating to twenty-one shipments which with supplementary information supplied by the representative were the basis of a rate study introduced in evidence as Exhibit 5. Said exhibit reflects undercharges in the amount of \$591.96. A rate expert testified that the underlying cause of these undercharges was the failure to follow the mixed shipment rule. According to this rule, if actual weights of the separate commodities contained in a shipment are not obtainable, charges for the entire shipment are to be computed at the rate applicable to the highest classed or rated commodity in the shipment. A third staff witness testified that he previously held an advisory conference with the carrier in November 1963 concerning the practice of incorrectly describing the commodity transported; however, the carrier continued this practice. Respondents presented testimony, later rebutted by a staff witness, that the actual weights were obtainable and if they had been made available to the staff rate witness the shipments would have been rated differently. This information was not obtainable from the carrier's records as it was never furnished the carrier by the shipper. The respondents' evidence showed that it would be very expensive and time consuming to review their records should the Commission order them to collect undercharges. Experts have been hired by the shipper so that information necessary for correct billing will be supplied the carrier.

After consideration the Commission finds that:

1. Respondents operate as a highway common carrier pursuant to a certificate and as a radial highway common carrier and city carrier pursuant to permits.

2. Respondents were served with the appropriate tariff and distance table and are parties to a tariff on file with this Commission.

3. In the absence of the respondents or the shipper showing what the actual weights were on the different commodities moving in mixed shipment, the charges computed by the staff are applicable.

4. Respondents misdescribed the commodities that were transported, thereby resulting in the shipper obtaining transportation of property at less than the applicable filed tariff rate and minimum tariff rate in the amount of \$591.96 set forth in Exhibit 5.

Based on the foregoing findings of fact the Commission concludes that respondents violated Sections 458, 494, 3664 and 3668 of the Public Utilities Code and should pay a fine pursuant to Section 1070 of the Public Utilities Code in the amount of \$5,000.

The order which follows will direct respondents to review their records to ascertain all undercharges that have occurred since January 1, 1964 in addition to those set forth in Exhibit 5. The Commission expects that when undercharges have been ascertained, respondents 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 respondents and the results thereof. If there is reason to believe that respondents, or their attorney,

have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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. Respondents shall pay a fine of \$5,000 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondents shall cease and desist from classifying items as miscellaneous hardware and shall bill according to proper classification and weights and rules of this Commission.

3. Respondents shall examine their records for the period from January 1, 1964 to the present time, for the purpose of ascertaining all undercharges that have occurred.

4. Within ninety days after the effective date of this order, respondents shall complete the examination of their records required by paragraph 3 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. Respondents shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth in Exhibit 5, together with those found after the examination required by paragraph 3 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, respondents 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 results 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 respondents. 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.

Frederick B. Haliloff
President
Auguston
William B. Bennett
Commissioners

I concur in the imposition of a fine, in the cease and desist order, and in the order to examine records and collect undercharges. However, I believe the proceedings should be kept open so that the precise amount of undercharges may be determined and consideration given to a further fine equivalent thereto. George S. Thover