

Decision No. 70008**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 CAR-GO)
 TRANSPORTATION CO., a California)
 corporation.)

Case No. 7919
 (Filed June 10, 1964)

Milton W. Flack, for respondent.

Charles T. Mohler, for C-K-M Transportation Co.,
 Inc.; Vincent P. Staunton, for Flinkote Company -
 Pioneer Division; interested parties.

Elinore Charles and J. B. Hannigan, for the
 Commission staff.

O P I N I O N

By its order dated June 10, 1964, the Commission instituted an investigation into the operations, rates and practices of Car-Go Transportation Co., a California corporation, hereinafter referred to as respondent, for the purpose of determining whether in the operation of its transportation business respondent violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code by charging and collecting less than the applicable charges prescribed in Minimum Rate Tariffs Nos. 2 and 5 and supplements thereto, performing for-hire transportation without charge and using known false weights.

Public hearing was held before Examiner Mooney at Los Angeles on December 16 and 17, 1964, on which latter date the matter was submitted.

It was stipulated that respondent was issued Radial Highway Common Carrier Permit No. 19-51184, Highway Contract Carrier Permit No. 19-51185 and City Carrier Permit No. 19-51186, and that respondent was served with Minimum Rate Tariffs Nos. 2 and 5 and Distance Table No. 4, with all supplements and additions thereto.

A Commission representative testified that he visited respondent's place of business in Vernon during October 1963 and again during May 1964, and that he reviewed all of respondent's transportation records for the period March through October of 1963. The witness stated that he made true and correct photostatic copies of 47 freight bills and various supporting documents covering shipments of processed rock in sacks and empty pallets returning from an outbound payload and that the photostats are all included in Exhibit 1.

The Commission representative testified that respondent's office and terminal are located in Vernon. He stated that respondent operates seven tractors and nine semitrailers; that in addition to the president and vice president, respondent employs five drivers; and that respondent's gross operating revenue for the year ending September 1964 totaled \$89,564.

The Commission representative testified as follows regarding the shipments of processed rock in sacks covered by Parts 1 through 33 of Exhibit 1: respondent did not have weight certificates for any of the rock shipments; the president of respondent admitted to him that the rock weighs 80 pounds per sack; he contacted the six shippers involved, and each verified that the weight of each sack of rock is 80 pounds; with respect to Part 29, the shipper did not issue the shipping instructions and the carrier did not issue the master document required by Item 160 of Minimum Rate Tariff No. 2 for a split-pickup shipment; he personally measured the actual mileage distance between each origin or destination that was not located at a basing point shown on the maps in Distance Table No. 4 and the nearest basing point shown on said maps.

Witnesses from five of the six companies for whom the rock shipments in Exhibit 1 were transported appeared at the hearing in response to subpoenas issued at the request of the Commission staff. Each testified that the sacks of rock transported by respondent for their respective companies weighed 80 pounds or more per sack. They described the types of sacks each used and explained the method employed by each to fill and weigh the sacks. Two of the shipper witnesses testified that their companies furnish respondent with a copy of the invoice for each shipment tendered and that the weight of the shipment is shown on the invoice. The two witnesses authenticated Exhibits 3, 4 and 5 which include copies of invoices obtained by the Commission staff from the two companies. The weight of the shipment is shown on each invoice in the three exhibits.

The Commission representative testified that he inspected the sack loading and weighing device at the place of business of the shipper who did not appear at the hearing.^{1/} He stated that he selected six sacks of rock at random and weighed them. The weight of each, he testified, exceeded 82 pounds.

With respect to the transportation of empty pallets covered by Parts 34 through 47 of Exhibit 1, the Commission representative pointed out that the only information shown on the documents included in each part is the number and type of pallets that were transported. He testified that no charge was assessed by respondent for this transportation. He stated that he had seen a number of the empty pallets at respondent's terminal and that he determined the weight for each type of pallet by actually weighing a representative number of each.

^{1/} A representative of this shipper was subpoenaed by the staff but could not attend the hearing due to illness. The subpoena was quashed.

A rate expert for the Commission staff testified that he had taken the set of documents in Exhibit 1 together with the supplemental information testified to by the Commission representative and formulated Exhibit 2, which shows the weight, rate and charge computed by the respondent for the transportation covered by Parts 1 through 33 of Exhibit 1, the weight, minimum rate and minimum charge computed by the staff for all parts of Exhibit 1 and the resulting undercharge for each part. He pointed out that the undercharges shown in Exhibit 2 resulted from basing transportation charges on a weight less than the actual weight of the shipment (Parts 1 through 33); assessing rates one cent (Parts 11 through 15 and 23 through 28) and two cents (Part 10) below the applicable minimum rate; consolidating two pickups as a single shipment without complying with the documentation requirements of Item 160 of Minimum Rate Tariff No. 2 (Part 29); and assessing no charge for the transportation of pallets (Parts 34 through 47).

The president of respondent testified as follows regarding the rock shipments: respondent is not furnished with weights by any of the shippers; respondent spot checks the weight of the rock shipments by weighing various shipments at random and has found the weight to vary between 36,000 and 40,000 pounds; respondent has checked the weight of many of the sacks of rock it has transported and has found the weight to vary between 50 and 80 pounds; respondent transports about six or eight loads of rock per month, and this accounts for only one or two percent of respondent's total transportation business.

Exhibit 6 introduced in evidence by respondent's president includes a copy of an invoice for a load of rock given to one of

respondent's drivers by a rock shipper. The witness pointed out that no weight is shown on the copy. He asserted that weights are not shown on any of the copies of invoices furnished to respondent's drivers by the shippers of rock and that Exhibit 6 is a typical example of this.

Respondent's witness testified as follows regarding the empty pallets: respondent commenced hauling asphalt for the two shippers involved approximately 19 years ago; both shippers tendered shipments to the respondent on pallets; neither shipper would allow respondent to remove the pallets from its premises; as a result, respondent's drivers were required to hand load the asphalt from the pallets onto the equipment and hand unload the shipments; this was time consuming and costly; to eliminate this undesirable situation, respondent worked out an arrangement with both shippers about ten years ago whereby respondent could exchange pallets with the shippers; to accomplish this, respondent constructed a total of about 300 pallets of the size and shape and with the markings used by each shipper; when respondent picks up a load from either shipper, it takes along with it the same number of pallets used on the shipment and exchanges them for the shipper's pallets; if respondent neglects to bring the exchange pallets with it at the time of pickup, it will take them to the shipper at a later date; at times, the carrier will accumulate pallets for several shipments in its yard and will take them all to the shipper at one time; the carrier prepares a document each time it returns exchange pallets for record purposes.

As to the several rate errors in Parts 1 through 33 of Exhibit 2, the president of respondent testified that respondent had

checked the mileage for these shipments and was of the opinion that its mileage calculations were correct.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 19-51184, Highway Contract Carrier Permit No. 19-51185 and City Carrier Permit No. 19-51186.
2. Respondent was served with appropriate tariffs and distance table.
3. The weight of each sack of rock included in the shipments covered by Parts 1 through 33 of Exhibit 1 was not less than 80 pounds.
4. Respondent based the transportation charges for each of the shipments of rock in sacks covered by Parts 1 through 33 of Exhibit 1 on a weight less than the actual weight transported.
5. The weight, rate and charge calculated by the Commission staff for the transportation of rock in sacks covered by Parts 1 through 33 of Exhibit 1 are correct.
6. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Parts 1 through 33 of Exhibit 2, resulting in undercharges in the amount of \$352.73.
7. The transportation of rock in sacks by respondent accounts for not over two percent of the total volume of transportation handled by respondent.
8. Respondent exchanged with the two shippers with whom it had pallet exchange arrangements pallets equal in number to those furnished by said shippers with palletized shipments.

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

1. It is the duty of the carrier to ascertain the correct weight of each shipment. Failure of a shipper to provide the carrier with the weight of a shipment does not relieve the carrier of this responsibility.

2. Respondent violated Sections 3664, 3668 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$750.

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 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 \$750 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall examine its records covering the transportation of rock in sacks for the period from April 1, 1963 to the

present time, for the purpose of ascertaining all undercharges that have occurred in connection with said transportation.

3. Within thirty 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.

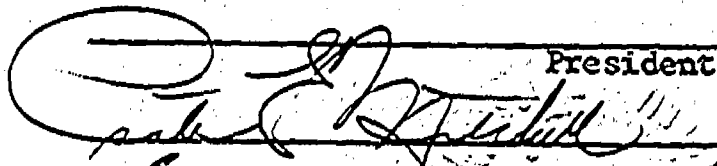
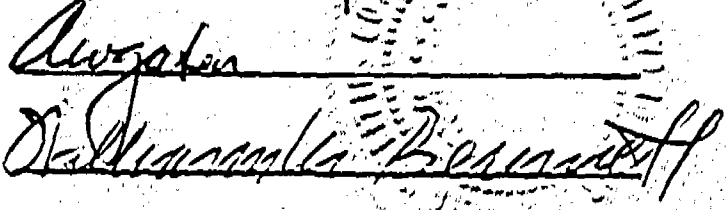
4. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, together with those found after the examination required by paragraph 2 of this order, and shall notify the Commission in writing upon the consummation of such collections.

5. In the event undercharges ordered to be collected by paragraph 4 of this order, or any part of such undercharges, remain uncollected 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.

6. Respondent shall cease and desist from exchanging pallets with shippers or supplying shippers with pallets or any other facilities or equipment unless or until proper authority is obtained therefor.

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 23rd day of NOVEMBER, 1965.


 _____ President


 _____ Commissioners

I concur, except as to the failure to dispose of Parts 34 through 47 relating to the transportation or "exchange" of pallets. Finding 8 and Ordering Paragraph 6 are inconsistent; and the amount of the fine (considering the other undercharges involved) also is at odds with Ordering Paragraph 6.

George G. Grover