

ORIGINALDecision No. 70511

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of TROJAN
TRUCKING SERVICES, INC., a
California corporation.

Case No. 8281

George A. Willson, for respondent.Elinore C. Morgan and Frank O'Leary, for
the Commission staff.O P I N I O N

By its order dated October 13, 1965, the Commission instituted an investigation into the operations, rates and practices of Trojan Trucking Services, Inc. (hereinafter sometimes called Trojan), a California corporation.

A public hearing was held before Examiner Gravelle on December 8, 1965, at Los Angeles and on said date the matter was submitted.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 30-4132 and Highway Contract Carrier Permit No. 30-4133. Respondent operates two leased trucks, one of which is a pickup. It employs two persons, one of whom, Ray Walton, is its president and sole shareholder. It was stipulated that Minimum Rate Tariff No. 7 and all supplements thereto had been served upon respondent.

Respondent was issued its permits pursuant to Decision No. 67575 in Application No. 46635 (Exhibit No. 1). Said decision found among other things that there was "such unity of interest" among Rodeffer Industries, Mr. Rodeffer and Mr. Webster (secretary-treasurer and comptroller of Rodeffer Industries and at that time sole shareholder of Trojan Trucking Services, Inc.) that the permits of Trojan should be conditioned so that Trojan must pay other carriers engaged to transport property for Rodeffer Industries or its subsidiaries, or for the customers or suppliers of said companies, not less than 100 percent of the applicable minimum rates and

charges. Said condition was imposed upon the permits. It is clear from that decision that the proposal of Trojan was to operate exclusively through other carriers without equipment of its own and to pay such other carriers only 95 percent of the applicable minimum rates and charges retaining 5 percent for itself. In effect, then, Decision No. 67575 granted the permits which Trojan was seeking, but conditioned such grant so that Trojan could not operate in the manner in which it had proposed. Trojan sought rehearing of Decision No. 67575, but rehearing was denied. Trojan then filed a petition for Writ of Review with the California Supreme Court, but that petition (No. SF 21850) was denied by the Court on December 2, 1964.

In the month of June 1965, a representative of the Commission's Field Section made an investigation of respondent's operation for the stated purpose of determining respondent's compliance with Decision No. 67575. Said investigation involved conversations with Mr. Roy Walton, respondent's president, and Mr. William F. Webster, then sole shareholder, at respondent's place of business on June 14, 1965, as well as a review of respondent's records made at the same time and place. The staff representative then contacted, on June 15, 17 and 21, 1965, three of the "other carriers" who actually performed the transportation service for Rodeffer Industries, to determine how they conducted their operations with reference to Rodeffer Industries and respondent.

At the hearing, the method of operation of respondent in accomplishing the movement of property of Rodeffer Industries was described by the staff representative, by Leonard Meier, Kenneth Veach and Robert Baird, and by Mr. Roy Walton. Meier, Veach and Baird are permittees who performed actual transportation of Rodeffer property; they testified under subpoenas issued at the request of

the Commission staff. Exhibits 3, 4, 6, 7, 8, 9 and 10 are copies of documents that substantiate the method of operation described by the witnesses. There is no material difference in the evidence describing the operations and it may be summarized as follows: When Rodeffer Industries has property to be transported by for-hire carriers, a Rodeffer weighmaster contacts Mr. Walton and tells him the requirements of the movement. Mr. Walton then contacts a permittee such as Meier, Veach or Baird and relays the information to such permittee. The permittee then effects the movement of the Rodeffer property. Rodeffer pays the permittee the applicable minimum rate and the permittee pays 5 percent of that sum to respondent. The payment of 5 percent is allegedly for services performed by respondent for the permittee who transports the property.

It is the payment of 5 percent of the gross transportation revenue that is the real issue in this proceeding. The staff contends that such payment is in violation of Decision No. 67575. Respondent contends that the payment is for services rendered by respondent to the permittees and that it is lawful.

Exhibit 2 is a copy of a service agreement similar in form to those entered into between respondent on the one hand and Meier, Veach and Baird on the other hand. It provides for the payment of "5% of gross for any and all services rendered by Trojan Trucking Services, Inc." Exhibit 5 is a copy of a document issued by respondent which sets forth the services offered its "customers". Those services are enumerated as follows:

- "1. Telephone Answering and Call Service.
2. Billing and Invoicing for Services.
3. Mailing Service.
4. Preparation P.U.C. and B. E. Returns.
5. Federal Income Tax Returns.
6. Franchise Tax Board Returns.

- "7. Securing License Plates.
8. Truck Repairs and Service.
9. Truck Dispatching
10. Pickup and Delivery Service."

The services set forth in Exhibit 5 are those for which the charge of 5 percent provided in Exhibit 2 is made. Meier, Veach and Baird each testified in substance that they had availed themselves of some of the services listed in Exhibit 5. In the main they consisted of Items 1, 2, 3, 9 and 10. Those items fit in with the operation as previously described herein. They each testified that the billing in 1965 was different from that in 1964 in the following respect: In 1965 respondent billed Rodeffer Industries directly for each of them; Rodeffer Industries issued its check to them but delivered it to respondent, who would then transmit it to them and in turn bill them for the 5 percent fee, which they would pay to respondent. In 1964 respondent billed Rodeffer Industries directly for each of them; Rodeffer in turn would issue a check for 95 percent of the gross to them and withhold 5 percent for respondent. This 1964 payment was described by one of the permittees as a "brokerage service" fee. Another permittee stated that he considered himself a subhauler and respondent a prime carrier in 1964.

Roy Walton, who is respondent's president, became its sole shareholder by purchase of the outstanding stock of respondent on November 16, 1965, some three weeks before the date of hearing in this matter. He paid William F. Webster \$1,000 for 10 shares of \$100 par value stock. The transaction is reflected by a bill of sale introduced in evidence as Exhibit 11.

Mr. Walton maintains the office of respondent at one of Rodeffer Industries' plants. He answers the telephone for Rodeffer Industries there but maintains a different telephone for respondent.

Respondent pays no rent to Rodeffer Industries for the use of the office. Mr. Walton testified that respondent is solely responsible for the for-hire movement of property from two of Rodeffer Industries' plants, one at Star Rock in Santa Ana Canyon and the other at the Ball Road plant, 14812 East Ball Road in Anaheim. He stated that for-hire carriers he utilized paid respondent the 5 percent "fee" whether or not they had signed an agreement such as Exhibit 2, that such an agreement was not mandatory, but that he would call a permittee who refused to pay such fee only if "I needed him real bad." Respondent secured by lease a 1957 3-axle dump truck from Challenge-Cook Brothers on November 20, 1965 and, prior to the date of hearing on December 8, 1965, had made one haul for Rodeffer Industries on November 30, 1965. On the date of hearing William F. Webster had ceased to be an officer, director or shareholder of respondent and was doing its bookkeeping work only on a temporary basis until someone else could be employed to provide that service for respondent's operation. Mr. Walton named three other entities for whom respondent secured trucking service but said they accounted for a very small percentage of respondent's business.

The record in this proceeding shows that the restriction or condition imposed by Decision No. 67575 has been violated by respondent. A method of operation has been established whereby the payment to the carriers who actually perform transportation service for Rodeffer Industries, instead of being made through the prime carrier who controls that service, is made directly to the transporting carrier. The 5 percent deduction requested by respondent in Application No. 46635 and denied by Decision No. 67575 is then collected from such transporting carrier by respondent for services that actually represent the function of a dispatcher or motor transportation broker. This method of operation constitutes a device by which respondent is evading the effect of the Commission order in Decision No. 67575.

Trojan Trucking Services, Inc. has not assumed the characteristic burdens of the transportation business as outlined by the Supreme Court of the United States in United States v. Drum, 368 U.S. 370, 7 L. Ed. 2d 360, and is not a Motor Transportation Broker licensed by this Commission. Its activity as adduced in this proceeding impairs the minimum rate structure and violates the Public Utilities Code.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 30-4132 and Highway Contract Carrier Permit No. 30-4133.

2. Respondent received its permits pursuant to Decision No. 67575 dated July 21, 1964, in Application No. 46635.

3. Decision No. 67575 ordered the imposition of the following condition upon respondent's permits:

"Whenever permittee engages other carriers for the transportation of property of Rodeffer Industries, Inc., subsidiaries of Rodeffer Industries, Inc., or the customers or suppliers of said companies, permittee shall not pay such carriers less than 100 percent of the applicable minimum rates and charges established by the Commission for the transportation actually performed by such other carriers."

4. Ray Walton, respondent's president and sole shareholder, performs services for Rodeffer Industries, Inc. for which he receives no remuneration; respondent utilizes the facilities of Rodeffer Industries, Inc. for office space and makes no payment to Rodeffer Industries, Inc. therefor.

5. Respondent and Rodeffer Industries, Inc. do not deal at arms length in the transportation of the property of Rodeffer Industries, Inc. through respondent.

6. The collection of 5 percent of the gross transportation charge by respondent from Leonard Meier, Kenneth Veach and Robert Baird for transportation performed for Rodeffer Industries, Inc.

constitutes a device whereby respondent has evaded and does evade the condition imposed upon its permits by Decision No. 67575.

Based upon the foregoing findings of fact, the Commission concludes that respondent has violated Decision No. 67575 issued pursuant to Section 3572 of the Public Utilities Code and Section 3737 of the Public Utilities Code, and should be ordered to cease and desist from such further violation, and that respondent should be ordered to pay to Leonard Meier, Kenneth Veach and Robert Baird, as well as to other carriers from whom it has collected a portion of the gross transportation charges for transportation actually performed for Rodeffer Industries, Inc. in the manner hereinabove described, the amounts thus collected from said Leonard Meier, Kenneth Veach, Robert Baird and said other carriers.

O R D E R

IT IS ORDERED that:

1. Respondent shall cease and desist from its practice of collecting a percentage of the gross transportation charge from carriers who actually perform transportation services for Rodeffer Industries, Inc.
2. Respondent shall cease and desist from violating Decision No. 67575 issued July 21, 1964 by means of the device described in the foregoing decision or by any other device.
3. Respondent shall comply in all respects with the order of this Commission set forth in Decision No. 67575 issued July 21, 1964.
4. To accomplish compliance with Decision No. 67575 respondent shall review its records to and including the effective date of this order to determine all cases wherein it collected any sum of money from carriers actually transporting property of Rodeffer Industries, Inc. or its subsidiaries, customers or suppliers (or from Rodeffer Industries for the account of such carriers) for services allegedly rendered to such carriers, and shall pay to such carriers any sums so

collected so that such carriers shall have received 100 percent of the applicable minimum rate and charge. Said payment shall be completed no later than one hundred twenty days after the effective date of this order.

5. Within thirty days after completion of the payment made pursuant to ordering paragraph 4 of this order, respondent shall report to the Commission in writing the results of its review of records and payment to the carriers involved.

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 29th day of MARCH, 1966.

Fredrick B. Hellhoff
 President

George H. Grove

Augustine

 Commissioners

I will file a dissent
Richard E. Mitchell

COMMISSIONER PETER E. MITCHELL DISSENTING:

The respondent, Trojan Trucking Services, Inc., in this investigation was first issued a Radial Highway Common Carrier Permit and a Highway Contract Carrier Permit by Decision No. 67575, dated July 21, 1964. At that time, I observed in my dissent:

"This type of operation can best be described as a brokerage service wherein the applicant contemplates engaging in business as a motor transportation broker (Section 4803, Public Utilities Code)." There was no evidence in the hearing that the applicant had the present ability to operate as a regulated carrier. Its sole piece of transportation equipment was a half-ton pickup truck and its financial ability was insufficient for the effectuating of the permits it sought. Without repeating at length my dissent in Decision No. 67575, the last paragraph therein is en résumé: "I would therefore deny the application on the present record. Phronesis dictates that the applicant has failed to establish financial responsibility."

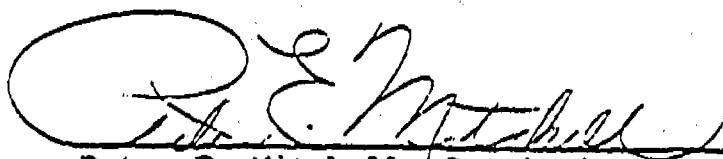
Little more than a year after a majority of the Commission signed Decision No. 67575, an investigation was instituted by the Commission into the operations, rates and practices of Trojan Trucking Services, Inc. (October 13, 1965). As a result, the instant decision was prepared.

The evidence shows that: "Trojan Trucking Services, Inc., has not assumed the characteristic burdens of the transportation business as outlined by the Supreme Court of the United States in

United States v. Drum, 368 U.S. 370, 7 L. Ed. 2d 360, and is not a Motor Transportation Broker licensed by this Commission. Its activity as adduced in this proceeding impairs the minimum rate structure and violates the Public Utilities Code."

Of course, the investigation of the respondent would have been unnecessary if its application for permits had been denied. But again, even after the citation, supra, the respondent is allowed by this decision to continue with its permits inviolate. Thus, the respondent, although impairing the minimum rate structure and not conducting itself as a regulated carrier, is allowed to retain its permits.

It is plain the permits of the respondent should be revoked. In addition, the Commission's order should be directed against those officers of the respondent who were responsible for the violation of the conditions imposed by Decision No. 67575. The fact that they may have disassociated themselves from the respondent does not relieve them of any obligations they incurred while controlling the respondent. The absence of any Commission action against such disassociated individuals allows them to re-enter the transportation business, indeed with the same carrier.


Peter E. Mitchell, Commissioner

San Francisco, California

March 30, 1966