

ORIGINALDecision No. 70534

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of DAVE MENDRIN
INCORPORATED, a corporation.

Case No. 8306
(Filed November 23, 1965)

Denslow Green, for respondent.

Elmer Siostrom and E. E. Cahoon,
for the Commission staff.

O P I N I O N

By its order dated November 23, 1965, the Commission instituted an investigation into the operations, rates and practices of Dave Mendrin Incorporated, a corporation (hereinafter referred to as respondent).

A public hearing was held before Examiner Mooney on January 27, 1966, at Fresno.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 20-1117. Respondent has a terminal in Madera, California. It owns and operates three trucks and trailers. It employs three drivers and a part-time bookkeeper and rate clerk. Its total gross revenue for the year ending with the third quarter of 1965 was \$121,026. Copies of the appropriate tariffs and distance table were served upon respondent.

On June 7 through 11, 1965, a representative of the Commission's Field Section visited respondent's place of business and checked its records for the period from November 1964 through April 1965, inclusive. The representative testified that he made

true and correct photostatic copies of 36 freight bills and supporting documents covering shipments of hay, irrigation pipe, overflow valves, potatoes and barley seed; that all of the photostatic copies are included in Exhibit 1; that information regarding commodity descriptions and the locations of the origins and destinations in Exhibit 1 was furnished to him by the president and the office manager of respondent; that he personally observed the precise location of many of the origins and destinations; and that he was furnished the weight of the irrigation pipe covered by Parts 4 through 24 of Exhibit 1 by the shipper.

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 representative, and formulated Exhibit 2, which shows the charge computed by the respondent, the minimum charge computed by the staff and the resulting undercharge for the transportation covered by each freight bill in Exhibit 1. The undercharges resulted from assessment of improper rates, failure to assess charges on the gross weight of shipments and free transportation. The rate expert stated that the total amount of the undercharges shown in Exhibit 2 is \$1,372.64.

The office manager of respondent testified that he is also the office manager of Dave Mendrin and Sons, Incorporated (hereinafter referred to as farm corporation), which he explained is engaged in farming operations. He stated that both respondent and the farm corporation are owned 100 percent by Mr. Dave Mendrin, his son and their wives; that both corporations have the same officers, directors and employees; and that consolidated tax returns are filed on behalf of both corporations. The witness

testified that the farm corporation operates 12 to 16 trucks in proprietary transportation and that, at the time of the staff investigation, respondent operated four trucks.

Respondent's office manager testified as follows regarding the shipments of irrigation pipe covered by Parts 4 through 16, Freight Bill 1972 in Part 18, Freight Bill 1971 in Part 19, Freight Bill 1975 in Part 21, Part 22, Freight Bill 1973 in Part 23, Freight Bill 1974 in Part 24, and Parts 33, 34 and 36 of Exhibits 1 and 2. The transportation covered by the aforementioned freight bills and parts was proprietary transportation of the farm corporation's freight by the farm corporation's equipment and drivers; due to bookkeeping errors, this was shown on respondent's books as for-hire transportation performed by respondent; the bookkeeping errors were discovered subsequent to the staff investigation and have now been corrected; Exhibit 3 lists the undercharges alleged by the staff in Exhibit 2 for the shipments which were in fact proprietary transportation.^{1/}

With respect to the transportation of irrigation pipe covered by Part 17, Freight Bills 02854 and 03174 of Part 18, Freight Bills 02834 and 03175 of Part 19, Part 20, Freight Bills 02857 and 02838 of Part 21, Freight Bills 02836, 03179 and 02856 of Part 23 and Freight Bill 02837 of Part 24, Exhibits 1 and 2, respondent's witness testified as follows: The pipe was purchased by the farm corporation from Bennett and Bennett; allowance for freight was deducted from the purchase invoice; the farm corporation held title

^{1/} The total amount of the undercharges shown in Exhibit 2 for the shipments therein alleged by respondent to be proprietary transportation is \$743.85 and not \$766.25 as shown in Exhibit 3.

to the pipe when it was transported; the farm corporation was the shipper in each instance and paid the charges assessed by respondent for each of the shipments.

Respondent's office manager testified that the hay, seed potato, potato and barley seed shipments covered by the balance of the parts of Exhibits 1 and 2 (Parts 1 through 3, 25 through 31, 32 and 35) were also transportation performed by respondent for the farm corporation. He stated that the farm corporation was responsible for and paid the charges shown on respondent's freight bill for each of the shipments.

Counsel for the Commission staff recommended that respondent be fined, under the provisions of Section 3800 of the Public Utilities Code, in the amount of the undercharges shown in Exhibit 2. No additional fine under the provisions of Section 3774 was recommended.

Respondent's attorney contended that the transportation covered by Exhibit 2 was either proprietary transportation by the farm corporation, which is not subject to regulation, or transportation performed by respondent for the farm corporation. As to the admitted for-hire transportation performed for the farm corporation, he argued that no benefit or injury accrued to either the farm corporation or respondent from the undercharges; that the undercharges resulted from inadvertent errors which have now been corrected; that when the farm corporation pays undercharges to respondent, the effect is that money is taken out of one pocket and placed in the other; and that the facts in this case do not warrant a fine.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 20-1117.
2. Respondent was served with the appropriate tariffs and distance table.
3. Respondent and the farm corporation both have the same shareholders, directors, officers and employees.
4. The transportation covered by Parts 4 through 16, Freight Bill 1972 in Part 18, Freight Bill 1971 in Part 19, Freight Bill 1975 in Part 21, Part 22, Freight Bill 1973 in Part 23, Freight Bill 1974 in Part 24 and Parts 33, 34 and 36 of Exhibits 1 and 2 was proprietary transportation performed by the farm corporation's equipment and drivers and is not subject to regulation by the Commission.
5. Except as provided in Finding 4, the transportation covered by Exhibits 1 and 2 was for-hire transportation performed by respondent for its affiliate, the farm corporation.
6. With the exception of the transportation listed in Finding 4, respondent charged less than the lawfully prescribed minimum rates in the instances as set forth in Exhibit 2, resulting in undercharges in the amount of \$628.79.

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

1. Respondent violated Section 3667 of the Public Utilities Code.
2. A fine under the provisions of Section 3800 of the Public Utilities Code will not be imposed. Said section requires the Commission to direct respondent to collect the undercharges

found herein and authorizes the Commission to impose upon respondent a fine in the amount of said undercharges. The authority to fine is discretionary and, based upon a review of the entire record, will not be invoked.

Respondent is placed on notice that the fact it is affiliated with the farm corporation does not relieve it, when dealing with its affiliated company, from any of the duties, obligations or responsibilities imposed on radial highway common carriers by law.

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 have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have not acted in good faith, or that respondent has continued to charge less than minimum rates in connection with transportation performed for the affiliated farm corporation, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether sanctions should be imposed.

O R D E R

IT IS ORDERED that:

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

2. Respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and in the event undercharges ordered to be collected by paragraph 1 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, 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.

3. Respondent shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this 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 5th day of APRIL, 1966.

Fredrick B. Holmquist
President

Thomas T. Hoover

Augusta

Melvin L. Bennett
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.