

ORIGINALDecision No. 70718

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of CAL-FREIGHT,
INC., a California corporation
doing business as L. A. TRUCKING CO.,
a California corporation.

Case No. 8250
(Filed August 17, 1965)

Charles W. Little, for respondent.

David R. Larrouy and Frank J. O'Leary,
for the Commission staff.

O P I N I O N

The Commission instituted an investigation into the operations, rates and practices of Cal-Freight, Inc., doing business as L. A. Trucking Co., a California corporation. It was developed at the hearing that respondent actually uses the fictitious name of L. A. Harbor Trucking Co. and that the designation L. A. Trucking Co. is in error.

A public hearing was held before Examiner Fraser on January 26, 1966, at Los Angeles.

Respondent presently conducts operations as a radial highway common carrier, a highway contract carrier and a city carrier. Respondent has a single terminal in Santa Fe Springs, California. It owns and operates six power units and ten trailer units. It employs three office workers, five drivers and a mechanic. Its total gross revenue for the four quarters consisting of the fourth quarter in 1964 and the first three quarters in 1965 was \$177,276. Copies of appropriate tariffs and distance table were served on respondent.

During the weeks of October 26-30, 1964 and March 15-19, 1965, a representative of the Commission's Field Section visited respondent's place of business and checked its records for the period from April through September, 1964. The underlying documents relating to 36 shipments were taken from respondent's files and photocopied. The photostatic copies on 34 of the shipments were submitted to the Rate Analysis Unit of the Commission's Transportation Division. Based upon the data taken from said photocopies a rate study consisting of 34 parts was prepared and introduced in evidence as Exhibit 2. Said exhibit reflects purported undercharges in the amount of \$1,853.66.

The staff alleges that respondent failed to provide written instructions from the shipper as required by Item 160 of Minimum Rate Tariff No. 2 on the first 18 parts of Exhibit 2. Each pickup, therefore, had to be rated as a separate shipment and each of the 18 parts had several pickups. Respondent rated each part as a single shipment with split pickups. The staff alleged an undercharge on Part 19 due to respondent's failure to assess and collect the switching charge. Respondent's representative testified that he called the railroad to ascertain the correct rate on Part 19 and the rate quoted did not include a switching charge. Part 20 alleges that respondent used the wrong rate and then multiplied the rate by the actual weight of the shipment instead of the required minimum of 40,000 pounds. Parts 21 and 22 were rated by respondent as split delivery shipments without receiving written instructions from the consignor as required by paragraph (b) of Item 170 of Minimum Rate Tariff No. 2. Respondent rated Parts 23 and 24 under the provisions of paragraph (e) of Item 170 of Minimum Rate Tariff No. 2, even though the written

instructions furnished by the consignor did not contain the information required by said paragraph. On Parts 25, 26 and 27 respondent used a 55-cent rate instead of the required 57-cent rate. Respondent failed to charge for a portion of the route on Part 28 and omitted the switching charge. The staff rated Part 29 based on the actual weight (45,000 lbs.); respondent used a 38,000-pound erroneous weight as the actual weight of the load. The staff rated Part 30 from an origin in Los Angeles to a destination in Los Angeles after a representative of the respondent admitted the origin listed on the freight bill was not correct; the respondent rated Part 30 according to the information on the freight bill. Respondent's representative testified that he inadvertently selected a rate from the wrong column on Part 31. Part 32 has the same alleged violation as Part 21. Respondent assessed and collected a flat rate charge on Parts 33 and 34 in violation of Item 257 of Minimum Rate Tariff No. 2; the freight bills on these two parts do not show the weight of the shipment in violation of Item 255 of Minimum Rate Tariff No. 2. Respondent's representative testified that the loads carried on Parts 33 and 34 were very light; the rate assessed on each of these parts, since the weight is not known, may or may not be less than the minimum prescribed. The documents on Part 35 (35-B of Exhibit 1) show "21 pallets to be returned deadhead"; respondent's representative stated that the pallets were never returned (free or otherwise) since the consignee refused to return the pallets and still has them. The witness further stated that the rate charged on Part 35 was in excess of the minimum; the staff alleged a free return of pallets had been provided on Part 35. The staff alleged that a flat charge was assessed on Part 36 rather than a rate based on

the weight of the shipment. Respondent's representative presented a letter from the Commission (Exhibit 4) dated December 5, 1961, which stated that "fresh olives destined to a cannery" are not subject to the minimum rates provided in Minimum Rate Tariff No. 8. The olives transported on Part 36 were not fresh olives.

An Appearance and an Affidavit filed by the Sullivan Hardwood Lumber Company, Inc., as an interested party, were delivered to the Examiner at the hearing room, just before the start of the hearing, and are hereby made a part of the record. The affidavit states that the Sullivan Lumber Company sold its lumber at a price which was based on the transportation charge paid at the time of billing and if additional charges now have to be paid, it will be impossible for the lumber company to pass the increased transportation charges on to the purchasers of the lumber. The affidavit further states that the pickup instructions were normally transmitted by telephone, but written instructions would have been provided if it had been known they were required.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 19-43724, Highway Contract Carrier Permit No. 19-43725 and City Carrier Permit No. 19-44506.
2. Respondent operates as Cal-Freight, Inc., doing business as L. A. Harbor Trucking Co.
3. Respondent was served with appropriate tariffs and distance table.
4. 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 \$1,853.66.

5. Respondent levied and collected a flat charge and failed to note on the freight bills the weight of the shipments hauled on Parts 33, 34 and 36.

6. Respondent did not provide a free return of the pallets as alleged by the staff on Part 35.

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

1. Respondent violated Items 255 and 257 of Minimum Rate Tariff No. 2 and Sections 3664, 3668 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,853.66, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

2. The record does not establish that respondent violated Items 250 and 255 of Minimum Rate Tariff No. 2 by transporting free loads.

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 either 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 \$2,353.66 to this Commission on or before the fortieth 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. 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 2 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.

4. 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 17th day of MAY, 1966.

Frederick B. Hallock
President

[Signature]

George H. Hoover

Augustus

William L. Bennett
Commissioners