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ORIGINAL

Decision No. 70923

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of ALHAMBRA
TRUCKING CO.; TRUCKING UNLIMITED;
and J. A. STAFFORD TRUCKING,
California corporations.

Case No. 7243

Berol, Loughran & Geernaert, by Bruce R. Geernaert and Edward J. Hegarty, for Alhambra Trucking Co., respondent.
Martin J. Rosen, for Trucking Unlimited, interested party.
B. A. Peeters and J. B. Hannigan, for the Commission staff.

O P I N I O N

By its order dated September 8, 1965, the Commission reopened the above-entitled proceeding for the purpose of determining whether respondent Alhambra Trucking Co. has failed to comply in whole or in part with ordering paragraph 4 of Decision No. 64908.

Public hearing was held before Examiner Porter on January 13 and 14, 1966, at San Francisco, and the matter was submitted on the latter date.

The original decision had found that Alhambra Trucking Co. was not the prime carrier, but that Trucking Unlimited and J. A. Stafford Trucking were, in fact, the prime carriers and should have received the minimum rates.

It was stipulated that Alhambra Trucking Co. has, pursuant to paragraph 4, audited its records and filed with the Commission a copy of the audit as required by said paragraph 4. Trucking Unlimited also filed an audit with the Commission. The audits show different amounts. The dispute is the subject of an action filed by Trucking

Unlimited against Alhambra Trucking Co. in the Superior Court. Alhambra Trucking Co. has not paid the amount shown by its audit because it has not been offered a release by Trucking Unlimited whose audit shows a larger amount due. ✓

In regard to J. A. Stafford Trucking the evidence shows that on advice of counsel it sued in Small Claims Court for the amount of approximately \$200 and judgment was rendered for Alhambra Trucking Co., the latter having denied any liability to J. A. Stafford Trucking.

Discussion

While this proceeding was reopened for the purpose of determining if Alhambra Trucking Co. has failed to comply in whole or in part with ordering paragraph 4 of Decision No. 64908, this respondent argued that this issue could not be resolved without taking into consideration ordering paragraph 5 of said decision. This argument raised the secondary issue of whether or not the statute of limitations was a valid defense for not complying fully with the Commission's "pay" order. Staff counsel took the position that there was no statute of limitations to an order made by the Commission.

Ordering paragraphs 4 and 5 of Decision No. 64908 read as follows:

"4. Alhambra Trucking Co. shall review its records relating to all transportation performed in behalf of Black Diamond Company wherein Alhambra Trucking Co. employed other carriers to effect such transportation between July 1, 1960, and the effective date of this order, and shall pay to such other carriers the difference between the lawful minimum rates and charges applicable to such transportation and the amount previously paid to such other carriers."

"5. Trucking Unlimited and J. A. Stafford Trucking shall review their records relating to all transportation wherein they were engaged by Alhambra Trucking Co. to transport property in behalf of Black Diamond Company between July 1, 1960, and the effective date of this order for the purpose of ascertaining the lawful minimum rates for such transportation, and shall take such action, including legal action, as may be necessary to collect the difference between the lawful minimum rates and the amounts they received for such transportation."

The respondent, Alhambra Trucking Co., buttressed its argument that once the respondents in ordering paragraph 5 of the above decision filed actions in courts of competent jurisdiction to collect the difference between the lawful minimum rates and the amounts they received for such transportation, respondent Alhambra Trucking Co. was not precluded from raising in the courts the statute of limitations as a bar to the payment of these disputed charges.

Findings and Conclusions

We hold that an order of the Commission continues in force either for the period designated in it or until changed or abrogated by the Commission, and that the Commission can rescind, alter, or amend any order or decision made by it. (Pub. Utils. Code Secs. 1705 and 1708.) An applicable statute of limitation might bar a court suit to collect undercharges (instituted pursuant to ordering paragraph 5 of Decision No. 64908), but such a statute of limitation would not operate to terminate the obligation of Alhambra Trucking to pay the undercharges in accordance with ordering paragraph 4 of Decision No. 64908. Ordering paragraphs 4 and 5 are separate orders and are not dependent on each other.

We find that Alhambra Trucking Co. has failed to comply with ordering paragraph 4 of Decision No. 64908. However, since Alhambra Trucking Co., in good faith, as a defense in the court action filed by Trucking Unlimited, relied upon the statute of limitations for not complying with said order, the Commission will not impose any further sanction.

After submission of the reopened proceeding, and by letter of April 26, 1966, counsel advised that Alhambra has offered and Trucking Unlimited has agreed to accept \$19,000 in settlement of the court litigation. In offering this amount Alhambra disregards any statute of limitations, as its audit disclosed approximately that amount to be due. The letter of April 26, 1966 is hereby made a part of the record as Exhibit No. 12A. Under the circumstances the Commission has no objection to the proposed settlement.

Pursuant to Decision No. 64908, Alhambra Trucking filed an audit with the Commission showing undercharges of \$1,340.39 as to J. A. Stafford Trucking Co. (Stafford's corresponding audit showed \$1,975.84, but the record herein is not sufficient to establish that Stafford's higher amount is correct; we therefore adopt Alhambra's audit for the purposes of this decision.) Stafford's determination to sue in Small Claims Court for only \$200 appears to have been made on the advice of its attorney that all but \$200 was barred by the applicable statute of limitation. As we have pointed out, however, it does not follow that any such statute of limitation would terminate the obligation of Alhambra Trucking to pay the amount of the undercharges in obedience to ordering paragraph 4 of Decision No. 64908.

Accordingly we find that Alhambra Trucking, pursuant to ordering paragraph 4 of Decision No. 64908 and its own audit, is obligated to pay \$1,340.39 to J. A. Stafford Trucking Co.

Based upon the foregoing, the Commission concludes that Alhambra Trucking Co. should pay \$19,000 to Trucking Unlimited and should pay \$1,340.39 to J. A. Stafford Trucking Co. Alhambra Trucking Co. should report to the Commission when it has made such payments.

O R D E R

IT IS ORDERED that:

1. Alhambra Trucking Co. shall pay \$19,000 to Trucking Unlimited.

2. Alhambra Trucking Co. shall pay \$1,340.39 to J. A. Stafford Trucking Co.

3. Alhambra Trucking Co. shall file a report within sixty days after the effective date of this decision of the action taken to pay the amounts set forth in this order.

4. In the event payments referred to in ordering paragraphs 1 and 2 of this decision have not been made within ninety days after the effective date of this order, Alhambra Trucking Co. shall file with the Commission on the first Monday of each month after the end of said ninety days a report of the amounts remaining to be paid and the action taken to pay such amounts, until such amounts have been paid 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 Alhambra Trucking Co. and Trucking Unlimited. The effective date of this order as to each of these respondents shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 12th day of JULY, 1966.

Frederic B. Holliday
 President

George G. Throver
 Auditor

 Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.