

ORIGINALDecision No. 70924

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, rates, charges and contracts of Corona Box and Lumber Co., a corporation; Interstate Container Corporation, a corporation; Ross Trucking Company, a corporation; Calvin O. Rice; Stanley W. Hinkle; Bert V. Harris; A. W. Hays Trucking, Inc., a corporation.

Case No. 7590

Marvin Handler and E. James McGuire, for Corona Box and Lumber Co. and Interstate Container Corporation, respondents.
J. B. Hannigan and B. A. Peeters, 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 Corona Box and Lumber Co. and Interstate Container Corporation have failed to comply, in whole or in part, with ordering paragraph 2 of Decision No. 67233.

A public hearing was held before Examiner Porter, on February 9 and 17, 1966, at San Francisco, at which time the matter was submitted.

By Decision No. 67233 Corona Box and Lumber Co. and Interstate Container Corporation were ordered to "pay to such furnishers of transportation the difference between the lawful minimum rate and charge applicable to such transportation and the amount previously paid to such furnishers of transportation ostensibly as subhauliers" after a review of their records.

A motion was made on behalf of Interstate Container Corporation that it be dismissed from this action; the reason being that on the 29th of May 1964 its plant was sold and all business activities, including the operation of trucks, ceased as of that date. Personal service of the order reopening this proceeding was not made on Interstate Container Corporation due to the fact said corporation was dissolved July 10, 1965.

The evidence, as pertinent to this proceeding, was that the audits had been prepared by respondent and the ostensible sub-haulers. These audits were filed with the Commission.

Discussion

While this proceeding was reopened to determine whether or not Corona Box and Lumber Co. and Interstate Container Corporation have failed to comply with ordering paragraph 2 of Decision No. 67233, these respondents argued that this issue could not be resolved without considering ordering paragraph 3 of said decision and that these ordering paragraphs should be read in the same context. Ordering paragraphs 2 and 3 of Decision No. 67233 read as follows:

- "2. Respondents Corona Box and Lumber Co., and Interstate Container Corporation shall review their records on all transportation performed wherein either respondent hauled for the other by using subhaulers to perform the actual transportation between January 1, 1962 and the effective date of this order. Respondents Corona and Interstate shall then pay to such furnishers of transportation the difference between the lawful minimum rate and charge applicable to such transportation and the amount previously paid to such furnishers of transportation ostensibly as subhaulers.
- "3. Respondents Ross Trucking Company, a corporation; Calvin O. Rice; Stanley W. Hinkle; Bert V. Harris; and A. W. Hays Trucking, Inc., a corporation, shall review their records relating to all transportation wherein they were engaged by Corona Box and Lumber Co. to transport property in behalf of Interstate Container Corporation or by Interstate to transport property in behalf of Corona Box and Lumber Co. between January 1, 1962, 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."

Corona Box and Lumber Co. and Interstate Container Corporation argued that they need not comply fully with the Commission's order since some of the claims presented to them by the respondents in ordering paragraph 3 of Decision No. 67233 were barred by the statute of limitations. These respondents took the position that, if actions had been filed against them in the courts, they would not have been precluded from raising in the courts the statute of limitations as a defense to the payment of the disputed amounts. Staff counsel, on the other hand, argued that there was no statute of limitations to an order of the Commission.

Finding and Conclusion

We restate our position and rationale taken in the decision entered today in the Alhambra Trucking Co., et al. reopened proceeding in Case No. 7243. Interstate Container Corporation will be dismissed as a respondent in Case No. 7590, but insofar as Corona Box and Lumber Co. is concerned we find that this respondent failed to comply fully with ordering paragraph 2 of Decision No. 67233. However, since Corona Box and Lumber Co. in good faith relied upon the statute of limitations for not complying fully with said decision the Commission, here too, will not impose any further sanctions upon Corona Box and Lumber Co.

The Commission affirms its order made in Decision No. 67233 and will further order Corona Box and Lumber Co. to comply with ordering paragraph 2 of Decision No. 67233.

O R D E R

IT IS ORDERED that:

1. Interstate Container Corporation is dismissed from Case No. 7590.

2. Ordering paragraph 2 of Decision No. 67233 is hereby affirmed.

3. Corona Box and Lumber 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 its audit filed with this Commission pursuant to ordering paragraph 4 of Decision No. 67233.

4. In the event payments referred to in ordering paragraph 2 of Decision No. 67233 have not been made within ninety days after the effective date of this order, Corona Box and Lumber 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 Corona Box and Lumber Co. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 15th day of JULY, 1966.

Fredrick B. Holdhoff
President

George E. Hoover

William M. Bennett

Commissioners

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