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ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of UNION
TERMINAL WAREHOUSE, a corporation,
and PACIFIC MOTOR TRUCKING COMPANY,
a corporation.

Case No. 8269
(Filed September 14, 1965)

John MacDonald Smith and J. A. Williams, for Union
Terminal Warehouse and John MacDonald Smith and
Anthony J. Konicki, for Pacific Motor Trucking
Company, respondents.
James Quintrall, for Los Angeles Warehousemen's
Association, interested party.
Elmer Sjostrom and E. E. Cahoon, for the Commission
staff.

O P I N I O N

On September 14, 1965, the Commission instituted this investigation on its own motion into the operations, rates and practices of Union Terminal Warehouse, hereinafter called UTW when referring to its general operations, UTW-W when referring to its warehouse operations and UTW-C when referring to its carrier operations, and of Pacific Motor Trucking Company, hereinafter called PMT, for the purposes of determining: (1) whether respondent UTW-C has violated Section 3667 of the Public Utilities Code by charging a lesser compensation for the transportation of property than the applicable charges prescribed in MRT No. 2; (2) whether UTW-C has permitted anyone to obtain transportation for property at less than the applicable rates and charges specified in MRT No. 2, in violation of Section 3668 of the Public Utilities Code; (3) whether PMT has permitted anyone to obtain transportation for property at less than the applicable rates and charges specified in Western Motor Tariff

Bureau Local Joint and Proportional Freight and Express Tariff No. 111, in violation of Section 458 of the Public Utilities Code; (4) whether PMT has violated Section 494 of the Public Utilities Code by charging a different compensation for the transportation of property than the applicable rates and charges specified in said tariff; (5) whether PMT has violated Section 494 of the Public Utilities Code by extending to anyone any privilege or facility in the transportation of property not uniformly extended to all; and (6) what action should be taken by the Commission in the event there has been a violation of said sections of the Public Utilities Code by UTW-C and/or PMT.

Public hearing in the matter was held before Examiner Cline in Los Angeles on November 30, 1965. The matter was taken under submission subject to the filing of concurrent opening and closing briefs, the last of which was filed on February 7, 1966.

As pointed out in the opening brief of respondents the principal issue presented in this proceeding is whether a warehouse may under California law engage in the practice of consolidating stored goods of its warehouse customers collectively for shipment prior to the tender of the freight (a) to a separately operated highway common carrier which is under common ownership with the warehouse, or (b) to the trucks operated by its own highway carrier division, the warehouse itself holding permits as a radial highway common carrier, contract carrier, and city carrier.

Based upon a consideration of the record herein, the Commission finds as follows:

1. Respondents UTW and PMT are both wholly owned subsidiaries of Southern Pacific Company.

2. None of the officers or employees of UTW or Los Angeles Union Terminal which leases the terminal to UTW holds any office or position with PMT or Pacific Motor Transport Company.

3. UTW operates a general merchandise public warehouse, a trucking business, and a small public garage at its terminal.

4. UTW-W operates its warehouse business under prescriptive operative right and certificate granted by Decision No. 51395, issued April 26, 1955, in Application No. 36759.

5. UTW-C operates its trucking business under (1) Radial Highway Common Carrier Permit No. 19-42229, issued on August 28, 1950, amended June 11, 1963 and July 28, 1964; (2) Highway Contract Carrier Permit No. 19-579, issued on February 10, 1936, amended June 11, 1963 and July 28, 1964, and (3) City Carrier Permit No. 19-40553, issued on June 11, 1950. The validity of the restriction on UTW's radial highway common carrier permit and highway contract carrier permit imposed by Commission Resolution No. 13885, dated July 28, 1964, has been challenged and is the subject of another proceeding before this Commission. This restriction provides that UTW-C shall not engage in the transportation of property over public highways under its permits when such transportation is covered by the highway common carrier operative authority of PMT and Pacific Motor Transport.

6. UTW-C was served with Minimum Rate Tariff No. 2 and Distance Table No. 4 on January 26, 1953 and with Distance Table No. 5 on January 24, 1964.

7. PMT has a highway common carrier certificate acquired by Commission Decision No. 56898, dated June 24, 1958.

8. Orders for withdrawal of merchandise from UTW-W are received in a number of ways, depending on the instructions of the storers. In some instances all releases are received from the main

office of the storer either by mail or teletype; in other instances brokers have authority to draw against merchandise stored for their principals, and in other instances UTW-W is authorized to accept telephone orders from any customer or a list of accredited customers. The order for withdrawal may be received by telephone, as a printed order form, or as a bill of lading.

9. When orders for withdrawal are received, a UTW-W warehouse clerk prepares a combination delivery order and bill of lading. The delivery order portion of the combination form goes to the warehouse and the goods to be withdrawn are physically moved to the first floor preparatory to shipment. The 47-cent charge provided in Rule 61 of Tariff 28-A for clerical expense incident to withdrawal of merchandise from storage includes the preparation of the bill of lading.

10. UTW-C has been engaged in trucking since 1931, and its permitted operations date back to 1936.

11. The equipment operated by UTW-C at the time of the shipments in issue was substantially the same as that listed in Exhibit 14, as follows:

- 6 - 16' enclosed van trucks
- 10 - 18' enclosed van type trucks
- 1 - 20' enclosed van truck
- 16 tractors
- 16 semitrailers

12. The usual geographic scope of UTW-C's trucking operations is the territory commonly referred to as the Los Angeles Basin Area.

13. The bulk of traffic handled by UTW-C is freight moving from the warehouse outbound to customers of UTW-W's warehouse storers. Occasional deliveries are made for other shippers who are not its warehouse storers.

14. When UTW-W uses an independent truck for a shipment, UTW-W's checker brings the merchandise covered by the bill of lading to the tailgate of the truck, checks the merchandise for description and

quantity and then obtains the signature of the truck driver for the merchandise so delivered. Thereafter, UTW considers that its responsibility for the merchandise ceases and the carrier's responsibility commences.

15. Similarly, when such shipments are carried by UTW-C as a permitted carrier, at the time the UTW-C truck driver signs for the merchandise, UTW considers that its responsibility as a warehouse ceases and its responsibility as a highway carrier commences.

16. UTW is a public warehouse carrying on a trucking business, and for accounting purposes the salaries of the president, vice president and general manager, the superintendent, the assistant to the vice president, and seven of the office personnel are allocated on a percentage basis to the warehouse operation and to the trucking operation of UTW, and the salaries of four other office personnel are allocated entirely to the trucking operation. The salary of Mr. Sovine, one of the UTW employees who makes the decisions respecting consolidation, is charged partly to warehousing and partly to the trucking operation. The shipping documents are prepared under this employee's direction.

17. UTW-W consolidates shipments only for its warehouse customers and then only for those who have indicated either in writing or orally to UTW-W that they desire to take advantage of such service.

18. The warehouse storers of UTW-W whose consolidated split-delivery shipments are the subject of this investigation had all requested UTW-W to perform the service for them prior to the time the shipments moved.

19. UTW-W charged its warehouse customers a flat charge of \$1.50 for each component part in a consolidated shipment, relying on the provisions of Rules 35 and 37 of Tariff No. 28-A. Neither Rules 35 and 37, nor any other rule of Tariff No. 28-A provides for this flat charge.

20. UTW-W uses Hodge Transportation, an independent carrier, PMT and its own UTW-C carrier division to handle consolidated shipments. Hodge Transportation handles the shipments to the San Diego area. The components of the consolidated shipment are identified by UTW-W prior to the tender of the traffic to the carrier.

21. The bills of lading contain the only written instructions pertaining to the consolidated split-delivery shipments, and since the bills of lading are prepared by UTW-W, no written instructions are issued by the warehouse storers with respect to individual consolidated shipments to allow for split-delivery services.

22. If the consolidated shipment is moving by a common carrier, UTW pays the freight and then, in turn, bills the warehouse storers whose merchandise has made up the consolidated shipment. The procedure in the case of a consolidated shipment moving by UTW-C truck is basically the same.

23. If the consolidated split-delivery shipments, carried by UTW-C as a permitted carrier for UTW-W's warehouse storers, which are in issue in this proceeding, had been rated separately, the transportation charges would have been \$4,086.03 greater than those actually made.

24. If the consolidated split-delivery shipments, carried by PMT for UTW-W's warehouse storers, which are in issue in this proceeding had been rated separately, the transportation charges would have been \$116.78 greater than those actually made. $(\$272.07 - \$8.00) - (\$149.95 - \$2.66) = \$116.78$.

25. It is the prevailing practice of warehousemen in the Los Angeles area to have an affiliated trucking operation so they can offer both warehouseing and trucking services. Exhibit No. 15 lists 35 public warehouses in Los Angeles and vicinity which have affiliated carriers.

If there has been any violation of law by UTW or PMT the Commission staff recommended that the Commission issue a cease and desist order.

Based upon the foregoing findings, the Commission concludes as follows:

1. A warehouseman, either in its own name as consignor, or in the name of the warehouse storer as consignor, may lawfully assemble the stored goods of one of its warehouse storers for tender, as a consolidated shipment for split delivery, either to an independent common or permit carrier, an affiliated common or permit carrier, or its own common or permit carrier division.

Historically one of the functions of a warehouseman has been to act as a storer's agent in consolidating stored goods for shipment. The staff itself has agreed that the practices of warehousemen are proper insofar as they apply to the consolidation of stored goods of an individual warehouse storer for split delivery shipment.

Item 60 of Minimum Rate Tariff No. 2 which provides:

"Each shipment shall be rated separately.
Shipments shall not be consolidated or
combined by the carrier..."

does not prevent a warehouseman from consolidating the stored goods of one of its warehouse storers for shipment even though the warehouseman also operates as a carrier. The warehouseman's operations as a warehouseman are clearly distinguishable from the warehouseman's operations as a carrier even though the same personnel may be engaged in both types of operations.

To comply with Item 170 of Minimum Rate Tariff No. 2 in case of a split-delivery shipment the consignor, whether the storer or the warehouse division of the warehouseman, should at the time of or prior to the pickup of the shipment give the carrier, whether independent of, affiliated with, or a division of the warehouseman, written

information showing the name of each consignee, point or points of destination, and the kind and quantity of property in each component part of such shipment.

A warehouseman in consolidating stored goods of one of its warehouse storers is authorized to do so under its operating rights as a warehouseman, and even though it is acting as a shipper's agent in doing so, it does not require additional operating authority as a freight forwarder.

Section 220 of the Public Utilities Code defining freight forwarder recognizes that a warehouseman acts as a shipper's agent by using the term "warehouseman or other shippers' agent" in the following exemption:

"This section shall not apply...to the operations of a warehouseman or other shippers' agent, in consolidating or distributing pool cars, whose services and responsibilities to shippers in connection with such operations are confined to the terminal area in which such operations are performed."

This exemption extends the right of a warehouseman to act for shippers other than its warehouse storers in connection with pool shipments where its services and responsibilities in connection with such operations are limited to the terminal area in which the warehouseman performs such operations. It should be noted that although the definitions of "pool shipment" and "split-delivery shipment" are not set forth in the Public Utilities Code, they do appear in Item 11 of Minimum Rate Tariff No. 2 and they are not synonymous.

2. A warehouseman in its own name as consignor may lawfully assemble the stored goods of two or more of its warehouse storers for tender, as a consolidated shipment for split delivery, either to an independent common or permit carrier, an affiliated common or permit carrier, or its own common or permit carrier division.

The same reasoning which justifies the consolidation for split-delivery shipment by a warehouseman of the stored goods of one of its warehouse storers justifies the consolidation for split-delivery shipment by the warehouseman as a single consignor of the stored goods of two or more warehouses' storers. In both operations the warehouseman is performing as a warehouseman and not as a carrier. The fact that the warehouseman may also have a permit carrier division and a common carrier affiliate, may be a means of obtaining business as a carrier but does not in the circumstances of this proceeding constitute a device whereby goods are transported at less than minimum rates or at other than common carrier rates. The shipments involved in this proceeding which were tendered to the permit carrier division or the common carrier affiliate of UTW were lawful split-delivery shipments as defined in Item 11 of Minimum Rate Tariff No. 2 as follows:

"Split Delivery Shipment means a shipment consisting of two or more component parts delivered to (a) one consignee at more than one point of destination, or (b) more than one consignee at one or more points of destination, the composite shipment weighing (or transportation charges computed upon a weight of) not less than 5,000 pounds, said shipment being shipped by one consignor from one point of origin. (See Note)

"Note. - All charges must be prepaid, and the carrier may not collect charges of any nature from any consignee."

3. UTW-C as a permit carrier has not violated Sections 3667 and/or 3668 of the Public Utilities Code in making its charges for the transportation of property involved in this proceeding.

4. PMT has not violated Sections 458 and/or 494 in making its charges for the transportation of property involved in this proceeding.

5. PMT has not violated Section 494 of the Public Utilities Code with respect to shipments involved in this proceeding by extending to UTW-W and/or its storers a privilege or facility not uniformly extended to all.

6. By assessing a flat charge of \$1.50 for each component part of a consolidated shipment, a charge not provided for in California Warehouse Tariff Bureau, Warehouse Tariff No. 28-A, UTW-W has violated Section 532 of the Public Utilities Code. UTW is placed on notice that it is henceforth expected to adhere strictly to its tariff rates on file with this Commission.

7. The investigation herein should be discontinued.

O R D E R

IT IS ORDERED that the investigation on the Commission's own motion herein is discontinued.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 6th day of SEPTEMBER, 1966.

Ed. Mitchell
President

Argator

William L. Beard

Commissioner George G. Grover
present but not voting.

Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.