

ORIGINALDecision No. 71507

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the rates, operations,
and practices of ELMO V. LaMARR, dba
LaMARR DUMP TRUCK SERVICE.

Case No. 8397

E. V. LaMarr and John L. Carle, for respondent.David R. Larrouy and E. E. Cahoon, for the
Commission staff.O P I N I O N

By its order dated April 26, 1966, the Commission instituted an investigation into the operations, rates and practices of Elmo V. LaMarr, doing business as LaMarr Dump Truck Service.

A public hearing was held before Examiner Mooney on July 6, 1966, at Los Angeles.

Respondent presently conducts operations as a for-hire dump truck carrier pursuant to radial highway common carrier and city carrier permits. Respondent is also engaged in the excavating and grading business. The investigation herein is limited to respondent's for-hire transportation operations.

Respondent has a terminal in Los Angeles, California. He owns and operates three dump trucks. He employs two drivers, five excavating equipment operators and one bookkeeper. The total gross revenue from his for-hire trucking business for the last three quarters of 1965 and the first quarter of 1966 was \$52,039. Copies of Minimum Rate Tariffs Nos. 7 and 17, together with all supplements and additions thereto, were served upon respondent. He has a subhaul bond on file with the Commission.

On January 28, 1966 and February 2, 3 and 4, 1966, a representative of the Commission's field division visited respondent's place of business and checked his transportation records for the period from October 17, 1965 through December 31, 1965. The representative testified that during said period respondent issued 65 shipping documents covering transportation in dump truck equipment and that the hourly rates in Minimum Rate Tariff No. 7 were assessed by respondent for this service. He stated that none of the documents include all of the information required to be shown thereon by paragraph (c) of Item 93.1 of the tariff. The witness testified that he made true and correct photostatic copies of 20 of the shipping documents and five invoices issued in connection therewith; that the copies of the shipping documents are included in Exhibit 1 as Parts 1 through 20 thereof and the copies of the invoices are included in said exhibit as attachments A through E; and that he has listed on the cover sheet for each part the specific information required by paragraph (c) of Item 93.1 that has not been shown on the document. He explained that because of the missing information, it is not possible to determine whether respondent had assessed the applicable minimum rate and charge for any of the transportation in issue. The representative stated that respondent had furnished him with all of the information he requested and had been very cooperative. He further explained that the Commission's files do not include any record of past violations of this type by respondent.

The documentation requirements for transportation performed under the hourly rates in Section No. 4 of Minimum Rate

Tariff No. 7 are set forth in paragraph (c) of Item 93.1 and provide as follows:

"(c) An Hourly Service Freight Bill shall be prepared by the carrier each day for each unit of equipment supplied under the provisions of Section No. 4. This freight bill shall show the following information:

- (1) Date.
- (2) Equipment number and capacity in cubic yards.
- (3) Name of carrier.
- (4) Name of underlying carrier (if any).
- (5) Name of consignor.
- (6) Address of consignor.
- (7) Name of debtor if other than consignor.
- (8) Address of debtor if other than consignor.
- (9) Name of consignee.
- (10) Address of consignee.
- (11) Type of loading at origin.
- (12) Commodity transported.
- (13) Time and location driver reported for work.
- (14) Starting, ending and elapsed time of the running time of the last trip.
- (15) Starting, ending and elapsed time of the unloading time of the last trip.
- (16) Overall time: From time reporting for work to start of last trip plus double the running time of last trip (elapsed time under paragraph 14) plus unloading time of last load (elapsed time under paragraph 15).
- (17) Any deductions for meals or failure of carrier equipment.
- (18) Net chargeable time (16 minus 17).
- (19) Applicable hourly rate.
- (20) Charges due.
- (21) Signature of consignor (or agent).
- (22) Signature of driver.
- (23) Signature of consignee (or agent)."

None of the documents in Parts 1 through 20 of Exhibit 1 include the information required to be shown thereon by the following subparagraphs of paragraph (c) of Item 93.1: (11) type of loading at origin; (13) time and location driver reported for work; (14) running time of last trip; (15) unloading time of last trip; (16) overall time; and (22) signature of driver. In addition the equipment number and/or capacity required to be shown on the document by subparagraph (2) was not included on the documents in Parts 1, 2, 4, 9 and 11 through 14; the address of the consignee

required by subparagraph (10) was not included on the documents in Parts 1, 2, 5 and 6; and the description of the commodity transported required by subparagraph (12) was not included on the documents in Parts 3 through 19.

Respondent testified that he has used the same method of preparing shipping documents for the past 30 years and has never in his experience found the documents to be inadequate. He asserted that any additional information not shown on the documents in Exhibit 1 which might be necessary for rating purposes can be found in his ledger books. He stated that in his opinion it is unlikely that any carrier is complying 100 percent with all of the detailed requirements of paragraph (c).

Respondent pointed out that the entry "977 Loader" or "977 Cat Loader" appears on most of the documents in Exhibit 1 (Parts 1-8, 11, 12, 16-19); that it is understood in the trade that this is a power loader; and that he has not failed to show the type of loading at origin as required by subparagraph (11) of paragraph (c) on said documents. He further pointed out that at least the first name of the driver has been shown on all documents in Exhibit 1 although, he admitted, the drivers did not sign the documents as required by subparagraph (22). The witness testified that although the commodity transported was not shown on most of the documents (Parts 3-19), he transports only dirt, concrete and debris and it would be obvious to anyone that this is what was transported.

Respondent testified that he uses subhaulers extensively; that all documents issued in connection with his subhaul operations meet the requirements of paragraph (c); that the only errors found by the staff were in connection with the two units of equipment that he operates; and that he has made a conscientious effort to

comply with paragraph (c) since this matter was brought to his attention by the staff during its investigation early this year.

Discussion

The documentation requirements in issue (paragraph (c) of Item 93.1) were added to Minimum Rate Tariff No. 7 (Fourth Revised Page 5-B) by Decision No. 69567, dated August 17, 1965, in Case No. 5437 (64 Cal. P.U.C. 689). Said tariff revision became effective on October 16, 1965.

Dump truck enforcement and compliance in connection with the problem of rate conversion in which carriers observe rates other than tariff rates and "falsify" their shipping documents to show that minimum hourly rates were assessed was one of the issues considered by the Commission in Decision No. 69567. The tariff was amended to provide precise and detailed documentation requirements for hourly rated shipments to cure this problem. On this issue the Commission concluded that documentation "falsification" is a serious violation and should be punished by the imposition of heavy fines and suspensions.

While Decision No. 69567 was concerned with the problem of rate conversion, the conclusions expressed in said decision regarding falsification of documents should and will be applied to any and all types of documentation failures irrespective of the reasons therefor. All information necessary to rate a shipment must be shown on the document. If the documentation is incorrect or incomplete, the Commission cannot determine from a review thereof whether rates no lower than the applicable minimum

rates are being assessed. [✓] The Commission has set out in detail in paragraph (c) of Item 93.1 the information that it considers necessary to be shown on shipping documents for hourly rated transportation. Deviations from these requirements will not be tolerated.

Respondent has indicated on most of the documents in Exhibit 1 that a power loader was furnished but did not specifically note thereon that it was used to load the equipment. The record clearly establishes that respondent has not recorded all of the information required by paragraph (c) on any of the hourly documents in Exhibit 1. We concur with the Commission staff that because of the lack of essential information on the documents it is not possible to determine whether applicable minimum rates and charges were assessed. The fact that certain of the information required by paragraph (c) may be in respondent's ledger books or that he may have personal knowledge of it does not satisfy his obligation to show the information on the shipping document.

There remains for discussion the question of the penalty to be assessed. We concur with the recommendation by the Commission staff that respondent be directed to cease and desist from further violations of the documentation requirements. The failure to comply with any directive, order or rule of the Commission is a serious matter and will not be overlooked. Respondent's operating authority also will be made subject to [✓] a one-year suspension if further violation of the documentation requirements occurs during the following one-year period. [✓]

Findings and Conclusions

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits.
2. Respondent was served with Minimum Rate Tariffs Nos. 7 and 17, together with all supplements and additions thereto.
3. Respondent has not properly completed and executed "Hourly Service Freight Bills" as required by paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7 in the instances set forth in Exhibit 1. ✓

The Commission concludes that:

1. Respondent violated Sections 3704, 3737, 4044 and 4077 of the Public Utilities Code.
2. Respondent's operating authority should be suspended, pursuant to Sections 3774 and 4112 of the Code, for a period of one year with the execution thereof deferred during said one-year period. If, at the end of the one-year period, the Commission is satisfied that respondent is in substantial compliance with the documentation requirements in issue, the suspension will be vacated without further order of the Commission.

The staff of the Commission will make a subsequent field investigation to determine whether respondent is complying with the documentation requirements in issue. If there is reason to believe that respondent is continuing to violate said provisions, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether the one-year suspension or any further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 19-53598 and City Carrier Permit No. 19-53599 issued to Elmo V. LaMarr, doing business as LaMarr Dump Truck Service, are hereby suspended for a period of one year; provided, however, that the execution thereof is hereby deferred pending further order of this Commission. If no further order of this Commission is issued affecting said suspension within one year from the date of issuance of this decision, the suspension shall be automatically vacated.

2. Respondent shall cease and desist from violating the documentation provisions of the Commission's minimum rate tariffs.

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 9th day of NOVEMBER, 1966.

[Signature]
President
[Signature]
[Signature]
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Commissioners