

ORIGINALDecision No. 71562

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of NORTH COAST
TRANSPORT, INC., a California
corporation.

Case No. 8382
(Filed March 22, 1966)

Robert C. Dunn, for respondent.
Meyer Kapler, for Tarter, Webster and Johnson
Division of American Forest Products Corporation;
and Stanley L. Parker, for The Pacific Lumber
Company; interested parties.
Elinore C. Morgan and Frank J. O'Leary, for the
Commission staff.

O P I N I O N

By its order dated March 22, 1966, the Commission instituted an investigation into the operations, rates and practices of North Coast Transport, Inc., a California corporation.

A public hearing was held before Examiner Mooney at Eureka, on April 13, 1966, on which date the matter was submitted, subject to the receipt of late-filed Exhibit 10, which was received on April 21, 1966.

It was stipulated that respondent was issued Radial Highway Common Carrier Permit No. 12-2396 and that respondent was served with Minimum Rate Tariff No. 2 and Distance Table No. 5, with all supplements and additions thereto.

A Commission representative testified that he, together with a second Commission representative, visited respondent's place of business in Rio Dell during November and December of 1965; that they reviewed all of respondent's transportation records for the period April through September of 1965; that during said review

period respondent transported approximately 1,200 shipments; that they made true and correct photostatic copies of 30 freight bills and various supporting documents covering shipments of lumber; and that the photostats are all included in Exhibit 1. The witness explained that Exhibit 1 is divided into five sections as follows: Section 1 includes 13 parts and relates to transportation performed for Tarter, Webster and Johnson; Section 2 includes three parts and relates to transportation performed for The Pacific Lumber Company; Section 3 includes four parts and relates to transportation performed for Tacoma Lumber Sales, Inc.; Section 4 includes two parts and relates to transportation performed for McIntosh Lumber Company; and Section 5 includes eight parts and relates to transportation performed for Twin Harbors Lumber Company.

The representative testified that the transportation covered by Parts 1 through 13 of Section 1 (Tarter, Webster and Johnson), Parts 1 and 2 of Section 2 (Pacific Lumber Company) and Parts 1 through 4 of Section 3 (Tacoma Lumber Sales) was to Plant 2 of Tarter, Webster and Johnson, Newark, California. He stated that he visited this location and contacted the office manager and the plant foreman of Tarter, Webster and Johnson and, based on the information furnished to him and on his personal observation, determined that said destination is not served by rail facilities. He explained that a private rail spur is located on the premises of American Forest Products, the parent company of Tarter, Webster and Johnson; that the intervening property between the rail spur and Plant 2, the point of destination, is owned by either American Forest Products or Tarter, Webster and Johnson; that the rail spur is located on the northernmost portion of the property, and Plant 2 is located on the southernmost portion of

the property; that the property borders on Cedar Boulevard and its continuation as Timber Street, which are generally to the northeast of the property; and that the property between the rail spur and Plant 2 is intersected by two public streets, Central Avenue and Robertson Avenue. The representative stated that a portion of the property between Central Avenue and Robertson Avenue is leased to the U-Haul Trailer Company. He testified that the property on the northwest corner of Cedar Road and Central Avenue is leased to Hulbert Lumber Co.; that the property immediately behind the Hulbert Lumber Co. on Central Avenue is open area; and that there is also a "Little League" baseball field on the property. The witness testified that there is a flood control ditch of the Alameda Flood Control District which cuts across the property between the location of the spur track and Central Avenue; that said ditch further separates the portion of the property on which the spur track is located and Plant 2; and that there are no bridges on the property in question which cross the ditch. He stated that in order to get from Plant 2 to the spur track, it is necessary to go eight-tenths of a mile on Timber Street and Cedar Boulevard to a private road which borders the American Forest Products' property and thence along said private road to the rail spur. The representative testified that the portion of the property on which the spur track is located and the portion of the property on which Plant 2 is located cannot be considered one and the same destination and do not come within the definition of the term "point of destination" as set forth in Item 11 of Minimum Rate Tariff No. 2.

The representative testified that his personal observation of the following points of origin and destination shown in Exhibit 1 disclosed that they are not served by rail facilities:

E. K. Wood Lumber Company, 515 North Beacon Street, San Pedro (destination, Part 3 of Section 2); Joe E. Morton Mill, Klamath (origin, Part 4 of Section 3); Dichter Lumber Sales, care of Kings Park, 1724 Alamo Street, Simi (destination, Part 1 of Section 4); Wagon Wheel Lumber Company, 303 Wagon Wheel Road, Oxnard (destination, Part 2 of Section 4); Elwin Company, 3411 North Peak Road, El Monte, and also the Elwin Company's location at 91 Commercial Street, High Grove (destinations, Part 1 of Section 5); Reliable Lumber Company, 8614 East Valley Boulevard, Rosemead (destination Parts 2 and 3 of Section 5); and the jobsite of the Chandler Lumber Company, 550 Laurie Lane, Thousand Oaks (destination, Part 8 of Section 5).

The second representative who participated in the investigation of respondent's operations testified that his personal observation disclosed that Sound Stud Company, Dunsmuir (origin, Parts 2, 3, 4 and 8 of Section 5) is not served with rail facilities. He stated that respondent has a terminal, office and shop at Rio Dell; that respondent had 18 employees, 14 tractors and 15 trailers during the period covered by the survey (April through September of 1965); that the number of employees was six at the time the investigation was made (November and December of 1965); and that its total gross revenue for the year 1965 was \$585,206.

The initial witness for the staff further testified as follows regarding Section 5 of Exhibit 1: The drivers' daily logs of respondent show that the two component lots of the transportation covered by Part 4 were picked up on July 14 and 16, 1965; the instructions from the consignor for the multiple lot transportation covered by Parts 5 and 6 and for the split pickup transportation covered by Part 7 were by telephone and no written instructions were prepared; respondent furnished him with the component pickup weights for the transportation covered by Part 7.

The traffic manager of the American Forest Products testified that Plant 2 of Tarter, Webster and Johnson is a railhead location and presented Exhibits 7, 8 and 9 in evidence to support his position. Exhibit 9 is an organizational chart of American Forest Products which shows that Tarter, Webster and Johnson is a division of the American Forest Products and not a separate corporation. Exhibit 7 is a map of the City of Newark issued by the Newark Chamber of Commerce. The witness has designated the location of the property in issue on the maps and has indicated the location of the spur track, the area leased to the Hulbert Lumber Company, the area leased to the U-Haul Trailer Company and Plant 2 within said property. Exhibit 8 includes a photostatic copy of the property tax plot of American Forest Products in Newark, photostatic copies of the tax statements for the various parcels within said property, which are all addressed to American Forest Products, a photostatic copy of the lease between American Forest Products and E. H. Hulbert and photostatic copies of Items 11 and 200 of Minimum Rate Tariff No. 2. The witness pointed out that Note 5 of Item 200 (Alternative Application of Common Carrier Rates) refers to the definition of "Point of Destination" in Item 11, and it is his contention that all of the property, with the exception of the two leased areas, constitutes a single point of destination and is a railhead location. He explained that a member of the Commission staff had informed him eight or ten years ago that since there was a spur track on a part of the property all of the property belonging to American Forest Products would be considered a railhead location.

In answer to cross-examination by the Commission staff, the traffic manager stated that there is a fenced pasture behind the property leased to Hulbert Lumber Company and that the balance

of the property behind this is a "Little League" baseball field which American Forest Products allows the city to use. He also stated that it is not possible to go across the property from the area of the team track to Plant 2 because of the drainage ditch.

A rate expert for the Commission staff testified that he had taken the set of documents in each of the five sections of Exhibit 1, together with the supplemental information testified to by the two Commission representatives, and formulated Exhibit 2 (transportation performed for Tarter, Webster and Johnson), Exhibit 3 (transportation performed for The Pacific Lumber Company), Exhibit 4 (transportation performed for Tacoma Lumber Sales, Inc.), Exhibit 5 (transportation performed for McIntosh Lumber Company) and Exhibit 6 (transportation performed for Twin Harbors Lumber Company). Each exhibit shows the weight and charge computed by respondent for the transportation covered by each part of the corresponding section of Exhibit 1, the weight, minimum rate and minimum charge computed by the staff for said transportation and the resulting undercharges. He stated that he had personally observed the property of American Forest Products at Newark and that, in his opinion, Plant 2 is not a railhead location. The witness explained that the undercharges in the various exhibits he prepared resulted from failure to assess an "off-rail" charge at destination (Parts 1-13 of Exhibit 2, Parts 1-3 of Exhibit 3, Parts 1-3 of Exhibit 4), assessing an incorrect "off-rail" rate at origin and failure to assess an "off-rail" charge at destination (Part 4 of Exhibit 4), failure to assess split delivery or stop-in-transit charges and failure to assess an "off-rail" charge at destination (Parts 1 and 2 of Exhibit 5 and Part 1 of Exhibit 6), failure to base the "off-rail" charge at destination on the total weight of the shipment (Parts 2, 3 and 8 of Exhibit 6), and absence of written instructions from the

consignor for multiple lot or split pickup shipments (Parts 4-7 of Exhibit 6). Respondent pointed out that the undercharge shown in Part 7 of Exhibit 6 was overstated by \$20. The staff corrected said part accordingly.

As a result of testimony by the president of respondent, the staff agreed that certain of its ratings should be revised. Accordingly, the undercharges on five parts (Parts 7, 9, 12 and 13 of Exhibit 2 and Part 1 of Exhibit 4) were eliminated, and the undercharges on eight parts (Parts 2, 3, 5, 6, 8, 10 and 11 of Exhibit 2 and Part 2 of Exhibit 3) were reduced. The total amount of undercharges shown in Exhibits 2 through 6, as revised by Exhibit 10, is \$1,522.63.

With respect to the split delivery shipment covered by Part 2 of Exhibit 5 (McIntosh Lumber Company), the president of respondent testified that Wagon Wheel Lumber Company at Oxnard, one of the destinations, has two yards at Oxnard. He stated that this information was furnished to him by both his driver and the consignee; that both informed him that one of the locations is served by rail and the other is not; and that he was informed by both that delivery was made to the yard located at 303 Wagon Wheel Road, which is served by rail facilities. Exhibit 11, filed by respondent, purports to show that no undercharge exists on this part, treating the delivery to Wagon Wheel Lumber Company to be a railhead location. The initial witness for the staff testified in rebuttal that to his knowledge the Wagon Wheel Lumber Company has only one yard at Oxnard, which is located at 303 Wagon Wheel Road, and that he personally viewed said property and found that it was not served by rail facilities.

The president explained respondent's ratings of the transportation included in Exhibit 6 (transportation performed for Twin Harbors Lumber Company). He stated that the two pickups of

the transportation covered by Part 5 were both made on September 2, 1965 and both loads were taken to respondent's yard and that the pickups were not made on September 2 and September 7, 1965, as contended by the staff. However, a review of the record discloses that the written shipping instructions required by the multiple lot rule in Item 85 of Minimum Rate Tariff No. 2 for the entire transportation were not prepared by the shipper, and the staff urges that each component pickup must be rated as a separate shipment. Respondent pointed out that in many instances it has requested shippers to furnish it with the required written instructions but they have failed to do so.

Discussion

As to Plant 2 of Tarter, Webster and Johnson, the record establishes that this is not a railhead location. The term "railhead" is defined in Item 11 of Minimum Rate Tariff No. 2 as follows:

"RAILHEAD means a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from, rail cars or vessels. It also includes truck loading facilities of plants or industries located at such rail or vessel loading or unloading point."

To be considered a railhead location, both Plant 2 and the area on which the spur track is located must be one and the same "point of destination", which term is defined in Item 11 as follows:

"POINT OF DESTINATION means the precise location at which property is tendered for physical delivery into the custody of the consignee or his agent. All points within a single industrial plant or receiving area of one consignee shall be considered as one point of destination. An industrial plant or receiving area of one consignee shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare."

The property on which the private spur track is located, the property on which Plant 2 is located and all intervening property is owned by American Forest Products. However, according to the evidence, it is necessary for motor truck equipment to traverse eight-tenths of a mile on Cedar Boulevard and its extension, Timber Street, which borders the property on the northeast, when transporting lumber between the portion of the land on which the spur track is located and the portion of the land on which Plant 2 is located. There are no bridges on the premises over the drainage ditch which cuts across the property that is between the spur track and Plant 2. Likewise, the area on which the spur track is located and Plant 2 are further separated by a strip of land along the northern side of Central Avenue which includes the property leased to E. H. Hulbert, the pasture area and the "Little League" baseball field. This strip of land and the drainage ditch prevent motor equipment from traveling across the property of American Forest Products from the rail spur to Plant 2. Plant 2 and the rail spur are not one and the same point of destination within the meaning of the tariff and, for this reason, Plant 2 cannot be considered a railhead location. They are separated by more than public streets or thoroughfares. In the circumstances, an off-rail charge must be assessed on truck shipments to Plant 2 which are rated under alternatively applied rail rates.

Although the traffic manager of Tarter, Webster and Johnson testified that he was informed eight or ten years ago by a member of the Commission staff that all of the property owned by American Forest Products was a railhead location, "it is a well-established principle of administrative law that statements of policy, administrative opinions, or interpretations of laws and regulations by employees of such an agency cannot be used to

preclude the agency from taking whatever action is necessary."

(In re Coast Trucking Co., 60 Cal.P.U.C. 67, 70 (1962).) It is to be noted also that the record does not disclose whether the representative was aware of all of the facts disclosed herein regarding the property.

With respect to the rating to be applied to Part 2 of Exhibit 5 (McIntosh Lumber Company), the record is clear that the component of the split delivery shipment consigned to Wagon Wheel Lumber Company was delivered to 303 Wagon Wheel Road, Oxnard. The evidence presented by the staff representative that this location is not served by rail facilities is based on his personal observation of the premises. The testimony to the contrary by respondent's president is based upon hearsay information purportedly furnished to him by the driver and the consignee. The testimony by respondent's president is not sufficient to overcome the evidence presented by the staff representative based on personal observation and knowledge. The staff rating of the transportation covered by this part is correct.

By Decision No. 64093 in Case No. 6368 (60 Cal.P.U.C. 98 (1962)), the Commission found that respondent did not review its records and collect undercharges in accordance with the directive to its predecessor company in Decision No. 60492 in the same case. Respondent was given the alternative of a suspension or a fine by Decision No. 64093. Respondent chose the suspension.

Findings and Conclusions

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 12-2396.

2. Respondent was served with Minimum Rate Tariff No. 2, Distance Table No. 5 and all supplements and additions thereto.

3. Plant 2 of Tarter, Webster and Johnson at Newark, Wagon Wheel Lumber Company at 303 Wagon Wheel Road, Oxnard, and all other locations which the two staff representatives testified are not served by rail facilities, are not railhead locations.

4. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 2 through 6, as amended by Exhibit 10, resulting in undercharges in the amount of \$1,522.63.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664 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 \$1,522.63, and that in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$750.

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 \$2,272.63 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. 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, 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 22nd day of NOVEMBER, 1966.

[Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners

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