

Decision No. 71609**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates, charges and practices of  
Manuel Aguiar, doing business as  
M and A Trucking, W. Kenneth  
Brightwell and Lyndon M. Brightwell,  
N. S. Hollingshead and R. S.  
Hollingshead, and Marion H. Ward.

Case No. 8343

Manuel Aguiar, in propria persona; Hugh N. Orr,  
for W. Kenneth and Lyndon M. Brightwell, and  
N. S. and R. S. Hollingshead; E. H. Griffiths,  
for Marion A. Ward, respondents.  
Robert C. Marks and Jerome B. Hannigan, for  
the Commission staff.

O P I N I O N

By its order dated February 1, 1966, the Commission instituted an investigation into the operations, rates, charges and practices of Manuel Aguiar, doing business as M and A Trucking (M&A); W. Kenneth Brightwell and Lyndon M. Brightwell; N. S. Hollingshead and R. S. Hollingshead; and Marion H. Ward.

Public hearings were held before Examiner Gravelle at Ukiah on May 24 and 25, 1966 and at San Francisco on July 7, 1966 and September 15 and 16, 1966. The matter was submitted on the latter date subject to the filing of late filed Exhibit No. 28 on or before October 3, 1966.

Respondents were investigated by a representative of the Field Section of the Commission's Transportation Division in October, November and December of 1964. The period of investigation encompassed the dates of December 1963 through June 1964 for M&A; May 1964 through October 1964 for respondent Marion H. Ward (Ward);

October 5 through 11, 1964 for respondents W. Kenneth Brightwell and Lyndon M. Brightwell (Brightwell); and September 28 through October 3, 1964 for respondents N. S. Hollingshead and R. S. Hollingshead (Hollingshead). During the periods under review M&A operated pursuant to Radial Highway Common Carrier Permit No. 23-1557, said permit was voluntarily suspended on August 30, 1965; Ward operated pursuant to Radial Highway Common Carrier Permit No. 23-1516 and Petroleum Contract Carrier Permit No. 23-1581 while Brightwell and Hollingshead held no operating authority from this Commission. Radial Highway Common Carrier Permit No. 1-10254 was issued to W. Kenneth and Lyndon Brightwell on December 7, 1965 and Radial Highway Common Carrier Permit No. 23-1605 was issued to Raymond S. Hollingshead on June 15, 1965.

M&A employed one driver and operated one truck and tractor. He reported gross operating revenue for the year ending with the second quarter of 1965 of \$15,749.

Ward employed five drivers, one bookkeeper, two yard men and one mechanic, he operated five tractors and five trailers and reported gross operating revenue of \$61,097 for the calendar year 1965.

In the course of his investigation the staff representative secured various shipping documents from the respondents and others, made photocopies thereof and transmitted said copies to the Rate Analysis Unit of the Commission Transportation Division. These photocopies were received in evidence as Exhibits Nos. 7, 9, 19 and 21. Based upon the data in the foregoing exhibits and supplemental information supplied by the staff representative, rate studies were prepared and introduced in evidence as Exhibits Nos. 8, 8A, 10, 20 and 22.

This case involves a variety of relationships among the various respondents and the alleged violation of several sections of the Public Utilities Code and Minimum Rate Tariff No. 2 as well as a question of jurisdiction.

Ward is a lumber dealer in the Ukiah area. He operates his own trucking equipment hauling his own goods, he also hires other carriers as a shipper to haul his goods, and as a permitted carrier engages in for-hire carriage for others. M&A dealt with Ward on a for-hire basis, Ward as shipper and M&A as carrier. M&A lacked the knowledge to properly rate his shipments and Ward agreed to undertake this activity upon the presentation to him of the M&A shipping documents. He would rate the shipments and thereafter issue a statement to himself as the shipper. Payment to M&A was accomplished on a piece meal basis in the form of advances when money was required. The documentation requirements of the Commission were not met by M&A in many instances.

Ward is also involved herein as a for-hire carrier who allegedly has charged less than the minimum rates and has utilized either subhaulers or leased equipment without having the requisite bond on file per General Order No. 102-3.

Brightwell and Hollingshead each leased equipment to Ward for the latter's use. Neither had operating authority at the time and the question is raised whether or not such lease was a device allowing Ward to circumvent Minimum Rate Tariff No. 2, as well as the question of whether or not Brightwell and Hollingshead were in fact highway carriers operating without Commission authorization.

The jurisdictional issue arises due to the fact that M&A has been adjudged a bankrupt and in the course of the bankruptcy proceeding the trustee and Ward as a shipper debtor have compromised

and settled a disputed sum for transportation service performed by M&A for Ward. Counsel for Ward argues that such action approved by the Referee in Bankruptcy makes the question of undercharges res adjudicata and relieves the Commission of jurisdiction to find or order collection of undercharges. Ward has moved for dismissal of the proceedings as they relate to M&A as a carrier and Ward as a shipper based on the foregoing argument.

Exhibit No. 8A reflects alleged undercharges relative to M&A of \$8,085.46. It consists of some sixty separate parts. Undercharges, however, were determined by the Commission rate expert not on the basis of individual shipments but as a total, due to the fact that there was insufficient documentary evidence of weights, charges and payment to individually compute undercharges. In each part of Exhibit No. 8A Ward is the shipper. M&A offered no defense in this proceeding. Ward challenged several of the parts in Exhibit No. 8A in addition to asking for dismissal of the proceeding against M&A. With reference to Parts 6G and 53 in said exhibit and the corresponding documents in Exhibit No. 7, Ward testified that these two parts were actually one movement in two units and that the weight of 48,000 pounds shown for Part 53 was therefore erroneous as was the minimum charge of \$144.00. The weight tag in Part 6G of Exhibit No. 7 shows a total weight of 48,300 pounds and indicates two units of equipment. The freight bill number of Part 6G is 8213 and of Part 53 is 8214. Both moved on the same day from the same point of origin to the same point of destination and were received by the same party for the consignee. We find that Part 53 of Exhibit No. 8A has not been proved, and strike the amount of \$144.00 from the total undercharges of \$8,085.46. Staff counsel pointed out that Exhibit No. 7, Parts 61 through 66, contained documents that indicated

shipments but which were not rated at all by the rate expert because of insufficient documentation. Had the rate expert been able to arrive at a minimum rate and charge for such movements the total undercharges would no doubt have been increased. To what extent is not of record herein.

The maintenance of records to allow the proper rating of shipments is the carrier's responsibility. It was not met by M&A and undercharges of \$7,941.46 resulted. Ward, the shipper, has paid to the trustee in bankruptcy on behalf of M&A, the sum of \$8,000 for transportation charges. This latter sum exceeds the undercharges of \$7,941.46. With regard to the jurisdictional issue we hereby deny the motion for dismissal made by counsel for Ward. Wholly apart from the question of ordering further payment after the Referee in Bankruptcy has assumed jurisdiction over a party regulated by this Commission, which we need not concern ourselves with here, the filing of bankruptcy can not divest the Commission of its authority to determine whether or not its Minimum Rate Tariffs have been or have not been complied with. Inasmuch as Ward has here already paid in excess of the undercharges found to exist the question of ordering additional collection by the bankrupt is moot.

Ward offered no defense to the rate violations with which he was charged as reflected in Exhibits Nos. 9 and 10. These consist of three parts and total \$16.76. He also admitted that his "subhaul bond" had lapsed for a period of sixty to ninety days in 1964 without his knowledge. He testified that as soon as he found out about this fact he had the bond renewed. The period of lapse coincides with the period of time in which Ward was leasing equipment from Brightwell and Hollingshead.

Brightwell and Hollingshead are similar in their relationship to Ward. W. Kenneth Brightwell is the father of Lyndon M. Brightwell and N. S. Hollingshead is the father of R. S. Hollingshead. In each case a lease was executed between the fathers and Ward by which certain motor vehicle equipment was leased to Ward by the respective father. The terms of the leases are identical and commenced August 1, 1964 for a period of one year. In each case the respective son was an employee of Ward and in some instances drove the leased equipment for Ward. The leases, Exhibits Nos. 19 and 21, are four pages in length and are explicit in their terms relative to use, control, payment, insurance, and identification of equipment. There is no evidence that the leases were not complied with in every respect by the parties thereto. It is the staff position that since both sons were sometime drivers of the leased vehicles, appeared as registered owners of the leased vehicles and were employees of Ward, the leases were a device to allow Ward to secure transportation at less than the minimum rate and charge.

W. Kenneth Brightwell testified that he had bought the leased equipment and entered into the Ward lease at the suggestion of his son in an effort to make some money and for no other reason. He testified that in each particular the lease was followed to the letter and that the only reason his son's name also appeared on the vehicle registration was because the bank from which he borrowed the money to buy the vehicles required it. Payments pursuant to the lease were deposited in a joint account in Ukiah by Ward for the respective father and son combination. The sons lived in Ukiah and the fathers lived elsewhere in California.

Leasing of motor vehicles to a highway carrier is not precluded by the Commission or the Public Utilities Code nor does

the lessor in such cases require any Commission authorization. Leasing of course can and often does exist in form only as a device to evade minimum rates. Such is not the case here. We find that the leases herein do not constitute a device in violation of Public Utilities Code, Section 3668.

After consideration the Commission finds that:

1. Respondent Manuel Aguiar operated pursuant to Radial Highway Common Carrier Permit No. 23-1557.
2. Respondent Marion H. Ward operates pursuant to Radial Highway Common Carrier Permit No. 23-1516 and Petroleum Contract Carrier Permit No. 23-1581.
3. Radial Highway Common Carrier Permit No. 23-1557 of Manuel Aguiar was voluntarily suspended on August 30, 1965.
4. Respondent Manuel Aguiar became a bankrupt on October 12, 1964.
5. Respondent Marion H. Ward was a debtor of Manuel Aguiar on October 12, 1964 based on transportation services performed by Manuel Aguiar for Marion H. Ward.
6. The Referee in Bankruptcy having jurisdiction over the estate of Manuel Aguiar approved a compromise on August 30, 1965, of \$8,000 for transportation services due Manuel Aguiar.
7. The \$8,000 payment by Marion H. Ward to the estate of Manuel Aguiar was completed on November 30, 1965.
8. Respondent Manuel Aguiar charged less than the lawfully prescribed minimum rate in the instance as set forth in Exhibit No. 8A with the exception of Part 53 thereof, resulting in undercharges of \$7,941.46.
9. Respondent Manuel Aguiar has failed to maintain the documentation required by Item 255 of Minimum Rate Tariff No. 2.

10. Respondent Marion H. Ward charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit No. 10 resulting in undercharges in the amount of \$16.76.

11. Respondent Marion H. Ward failed to have in effect and on file with the Commission a bond during a period of time when he was leasing equipment.

Based upon the foregoing findings of fact the Commission concludes that respondent Manuel Aguiar violated Sections 3664 and 3657 of the Public Utilities Code. Said respondent is out of business and has collected in excess of the undercharges found herein. No fine will be imposed. Respondent Marion H. Ward violated Sections 3575, 3664 and 3667 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$16.76, and in addition thereto respondent Marion H. Ward should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$250. Respondents W. Kenneth Brightwell, Lyndon M. Brightwell, N. S. Hollingshead and R. S. Hollingshead have violated no sections of the Public Utilities Code.

The Commission expects that respondent Marion H. Ward 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 thereof. If there is reason to believe that respondent, or his 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 Marion H. Ward shall pay a fine of \$266.76 to this Commission on or before the twentieth day after the effective date of this order.
2. Respondent Marion H. Ward 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. 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 proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; 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 and 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. With regard to respondents Manuel Aguiar, W. Kenneth Brightwell, Lydon M. Brightwell, N. S. Hollingshead and R. S. Hollingshead this investigation is discontinued.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondents. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 29<sup>th</sup> day of NOVEMBER, 1966.

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President

Frederick B. Hololuff

William C. Bonds

Aguiar  
Commissioners

Commissioner George G. Grover did not participate in the disposition of this proceeding.

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.