

ORIGINAL

Decision No. 72010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,
rates, charges, and practices of
BALSER TRUCK COMPANY, a corporation,
and BULK FREIGHTWAYS, a corporation.

Case No. 8288
(Filed October 26, 1965)

Knapp, Gill, Hibbert & Stevens, by Warren N. Grossman, for both respondents.
Richard L. Molzner, for Stauffer Chemical Company, interested party.
Elmer Sjostrom and E. E. Cahoon, for the Commission staff.

O P I N I O N

By its order dated October 26, 1965, the Commission instituted an investigation into the operations, rates and practices of Balser Truck Company, a corporation (Balser), and Bulk Freightways, a corporation (Bulk).

Public hearing was held before Examiner Mooney at Los Angeles on July 19 and 27, 1966.

Balser presently conducts operations pursuant to a highway common carrier certificate and radial highway common carrier, highway contract carrier and city carrier permits. Bulk presently conducts operations pursuant to radial highway common carrier, highway contract carrier and city carrier permits. Counsel for the Commission staff stipulated that Balser's certificated operations are not involved herein.

Both respondents occupy the same terminal in Southgate. Balser has 30 employees; operates 25 power units, 35 trailers and five dollies; and had a gross operating revenue of \$490,734 for the year 1965 and \$128,741 for the first quarter of 1966.

C. 8288 ds

Bulk has 14 employees; operates 10 power units and 11 trailers; and had a gross operating revenue of \$409,484 for the year 1965 and \$110,226 for the first quarter of 1966. Both respondents were served with Minimum Rate Tariff No. 2 and Distance Tables Nos. 4 and 5, together with all supplements and corrections thereto.

A representative of the Commission's Field Section visited respondents' place of business in January, 1965, and checked the records of each for the period June 1, 1964 through December 31, 1964. He testified that he examined approximately 3,000 freight bills issued by Balser and 1,500 freight bills issued by Bulk during the review period; that he made true and correct photostatic copies of 24 of Balser's freight bills and supporting documents and 61 of Bulk's freight bills and supporting documents issued during said period; and that the Balser photocopies are included in Exhibit 1 as Parts 2 through 25 thereof, and the Bulk photocopies are included in Exhibit 2 as Parts 1 through 61 thereof. At the request of staff counsel, Part 1 of Exhibit 1 was stricken. The witness testified that he had personally observed that certain origins and destinations in Exhibits 1 and 2 were not served by rail facilities.

A rate expert of the Commission staff testified that he took the set of documents in Exhibit 1, together with the supplemental information regarding said exhibit testified to by the representative, and formulated Exhibit 3, which shows the charges computed by Balser, the minimum charges computed by the staff and the resulting undercharges for the transportation covered by each freight bill in Parts 2 through 25 of Exhibit 1. He explained that he had, in a like manner, taken

C. 8288 ds

the Bulk documents in Parts 1 through 61 of Exhibit 2 and the supplemental information testified to by the representative relating thereto, and formulated Exhibit 4. Exhibit 3 (Balser) reflects purported undercharges of \$3,203.17, and Exhibit 4 (Bulk) reflects purported undercharges of \$585.80.

Exhibit 3 shows that Balser assessed incorrect minimum and alternative rail rates, failed to assess off-rail charges at destination and illegally consolidated shipments. Exhibit 4 shows that Bulk failed to assess applicable switching charges, assessed incorrect minimum and alternative rail rates and illegally consolidated shipments.

A rate consultant, engaged by respondents, testified that he reviewed the staff exhibits. He stated that he agreed with the staff ratings shown in Exhibit 4 (Bulk), and explained that the majority of the errors resulted from failure to assess a switching charge which Bulk did not realize was applicable. He testified that with the exception of Parts 11, 13, 20, 21 and 23, he concurred with the staff ratings in Exhibit 3 (Balser). Exhibits 5 and 6 set forth the ratings suggested by the witness for the aforementioned parts of Exhibit 3 (Balser). The staff rate expert testified in rebuttal that the transportation covered by said parts cannot be rated in the manner suggested in Exhibits 5 and 6.

The Transportation Coordinator of Stauffer Chemical Company, the shipper involved in 20 parts of Exhibit 3 (Balser), stated that Stauffer had tendered the shipments in good faith with no intent to obtain transportation at less than applicable minimum rates. He stated that he did not agree that there were undercharges on 15 of the parts. As to the other five parts,

he agreed with the staff ratings. He argued that any errors that did occur were the responsibility of Balser and that Stauffer should not now be penalized by being required to pay undercharges on past shipments.

The transportation of chemicals covered by Parts 11, 20, 21 and 23 of Exhibit 3 (Balser) cannot be rated in the manner suggested by respondents' rate consultant in Exhibits 5 and 6. The freight covered by each part was tendered as a single shipment with three component deliveries. All origins and destinations are served by rail facilities. The consultant suggests that each of the shipments be rated under the alternative application provisions of Minimum Rate Tariff No. 2 by applying a rail rate from origin to the second destination plus a stop-in-transit charge at the first destination for partial unloading plus a separate rail rate from the second to the third destination. While a combination of rail rates may be applied, the applicable transit tariff (Pacific Southcoast Freight Bureau Tariff No. 194-T) allows only one stop in transit for partial unloading of the commodities involved between origin and final destination when the freight is tendered to the carrier as a single shipment. The effect of the rating method suggested by the consultant is to provide two stops in transit for partial unloading between origin and final destination, whereas only one is authorized.

Likewise, the transportation of 96,610 pounds of chemicals and 214 pounds of washing compound covered by Part 13 of Exhibit 3 (Balser) cannot be rated under the alternative application provisions in the manner suggested by the consultant in Exhibit 5. Said part covers freight tendered to Balser as a single mixed shipment from a railhead location in South Gate to

railhead destinations in Berkeley, San Francisco and Oakland. The consultant suggests breaking the shipment into two separate carload shipments for rating purposes and relies on Item 19 of P.S.F.B. Tariff No. 300 as authority. He has considered the freight destined to Berkeley as one shipment and has applied a rail carload rate from South Gate to Berkeley to this portion of the mixed shipment, and he has considered the freight destined to San Francisco and Oakland as a separate shipment and has applied the rail carload rate from origin to San Francisco plus a stop-in-transit charge at Oakland for partial unloading to this latter portion of the mixed shipment. However, the applicable transit tariff (P.S.F.B. Tariff No. 194-T) does not authorize splitting the shipment into two separate carloads for rating purposes and, for the commodities involved, allows only one stop in transit for partial unloading. When stopping in transit is accorded on a shipment, the transit tariff governs. The effect of the rating procedure suggested by the consultant would be to allow more stops in transit for partial unloading of a mixed shipment of the commodities herein involved than would be allowed if the shipment consisted of a single commodity. This is not authorized.

While both respondents concede that all undercharges found herein should be collected, they argue that because of the technical nature of the violations, no penalties should be imposed. We do not concur with their argument. Granting that the rating of shipments, in many instances, may be difficult and require technical proficiency, the law is settled that neither negligence, inexperience, nor inadvertence constitutes a defense to a failure to collect the proper tariff charge. (61 Cal.P.U.C. 234, 236 (1963).)

After consideration, the Commission finds that:

1. Balser operates pursuant to a highway common carrier certificate (which is not involved herein) and pursuant to radial highway common carrier, highway contract carrier and city carrier permits.

2. Bulk operates pursuant to radial highway common carrier, highway contract carrier and city carrier permits.

3. Respondents were both served with appropriate tariffs and distance tables.

4. Balser charged less than the lawfully prescribed minimum rates in the instances set forth in Parts 2 through 25 of Exhibit 3, resulting in undercharges in the amount of \$3,203.17.

5. Bulk charged less than the lawfully prescribed minimum rates in the instances set forth in all parts of Exhibit 4, resulting in undercharges in the amount of \$585.80.

Based upon the foregoing findings of fact, the Commission concludes that:

1. A permit carrier is required by law to collect undercharges irrespective of the reasons therefor.

2. Respondents violated Sections 3664 and 3667 of the Public Utilities Code.

3. Balser should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$3,203.17, and in addition thereto should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

4. Bulk should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$585.80, and in addition thereto should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$100.

The Commission expects that respondents will each 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 each respondent and the results thereof. If there is reason to believe that either of the respondents or the attorney of either have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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 against either or both respondents.

O R D E R

IT IS ORDERED that:

1. Balser Truck Company, a corporation, shall pay a fine of \$3,703.17 to this Commission on or before the twentieth day after the effective date of this order.
2. Bulk Freightways, a corporation, shall pay a fine of \$685.80 to this Commission on or before the twentieth day after the effective date of this order.
3. Each respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein as to it, and shall notify the Commission in writing upon the consummation of such collections.
4. Each respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges found as to it and in the event undercharges ordered to be collected by either or both respondents by

paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, said respondent or respondents 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.

5. Respondents 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 each respondent. The effective date of this order as to each respondent shall be twenty days after the completion of such service on it.

Dated at San Francisco, California, this 15th day of FEBRUARY, 1967.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners