

ORIGINAL

Decision No. 72072

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the rates, opera-)
tions, and practices of WEISZ)
TRUCKING CO., INC. }

Case No. 8466
(Filed July 12, 1966)

Phil Jacobson, for respondent.
S. M. Bolkan, Esq., and Richard Carlin
for the Commission staff.

O P I N I O N

The Commission instituted an investigation into the operations, rates and practices of Weisz Trucking Co., Inc.

A public hearing was held before Examiner Mooney on December 13, 1966, at Los Angeles.

Respondent conducts operations pursuant to radial highway common carrier and city carrier permits and a cement carrier certificate. The investigation herein is limited to respondent's dump truck operations under its permits.

Respondent has a terminal in Irwindale, California. It owns and operates two tractors and two sets of bottom dump trailers. It has seven employees. Its total gross operating revenue for the year ending June 30, 1966 was \$2,576,563. Copies of Minimum Rate Tariffs Nos. 7 and 17 and Directory 1, together with all supplements and additions to each, were served upon respondent.

On various days during February and March 1966, a representative of the Commission's field section visited respondent's place of business and checked its records for the period from October 16, 1965 to December 31, 1965. The representative testified that approximately 317 hourly service freight bills were issued

during the review period; that none of said documents included all of the information required to be shown thereon by paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7; and that because of the missing information, it is not possible to determine from the documents whether applicable minimum rates and charges were assessed for any of the transportation in issue.

The representative testified that he made true and correct handwritten copies of 20 of the hourly service freight bills issued during the review period and that the copies are all included in Exhibit 1 as Parts 1 through 20, thereof. The witness stated he did not explain to respondent his reason for wanting copies of said documents since he did not know at that time how far the investigation would proceed. For this reason, he stated, respondent refused to allow him to photostat the documents. The representative testified that all of the transportation covered by the documents in Exhibit 1 was performed by subhaulers; that the subhaulers prepared the documents; and that he visited each of the subhaulers involved and compared the copies he had made with the documents the subhaulers had prepared. The transportation covered by Exhibit 1 is subject to both the Highway Carriers' and the City Carriers' Acts.

The representative testified that he has listed in Exhibit 2 the specific information required to be shown on the hourly service freight bill by subparagraph (c) of Item 93.1 which, in his opinion, is missing from the documents in Exhibit 1. There are no allegations in this proceeding that respondent charged less than minimum rates or falsified its documents.

None of the documents in Exhibit 1 include all of the time information required to be shown on the hourly service freight bill by paragraph (c) of Item 93.1. In addition, the cubic capacity of the equipment, type of loading at origin and other specific information required by paragraph (c) is missing from the documents.

Respondent's counsel pointed out that his client was unable to obtain new document forms with spaces for recording all of the information required by paragraph (c) of Item 93.1 (which became effective October 16, 1965) until early 1966. In this connection, staff counsel pointed out that a suggested form of the hourly service freight bill document is included in the tariff and that respondent could have copied this form.

With respect to the question of whether respondent is responsible for errors or omissions in the shipping document when the transportation was actually performed by a subhauler and the subhauler prepared the document, we have consistently held that the overlying carrier engaged by the shipper is not relieved of responsibility for such errors or omissions irrespective of whether said overlying carrier, the subhauler or anyone else prepares the document.

We are here concerned with the question of whether or not respondent complied with the documentation rules that were in effect at the time the transportation covered by the documents in Exhibit 1 moved. The fact that the Commission may now have proposals before it in any other proceedings to amend the documentation rules is not determinative in this case.

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits and a cement carrier certificate.
2. Respondent was served with Minimum Rate Tariffs Nos. 7 and 17, and Directory 1, together with all supplements and additions to each.
3. Respondent is responsible for compliance with the documentation requirements of Minimum Rate Tariff No. 7, irrespective of whether the documentation is prepared by respondent or by the subhauler who performed the transportation.

4. 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.

3. Respondent's motion to dismiss the investigation should be denied.

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. 19-46947 and City Carrier Permit No. 19-56885 issued to Weisz Trucking Co., Inc., 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.

3. The motion by respondent to dismiss the investigation herein is denied.

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 29th day of FEBRUARY, 1967.

 President
William L. Bennett

William Lyons

Paul P. Moroney
 Commissioners

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

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.