

ORIGINALDecision No. 72083

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own }
 motion into the rates, operations and }
 practices of JAMES K. BARKER, dba }
 J. K. Barker Trucking. }

Case No. 8439
 Filed June 8, 1966

James K. Barker, in propria persona,
 respondent.
David R. Larrouy and Richard Carlin,
 for the Commission staff.

O P I N I O N

By its order dated June 8, 1966, the Commission instituted an investigation into the rates, operations and practices of James K. Barker, doing business as J. K. Barker Trucking.

Public hearing was held before Examiner Mooney at Los Angeles on October 27, 1966.

Respondent conducts operations as a dump truck carrier pursuant to radial highway common carrier and city carrier permits. Respondent has a terminal in Torrance. He employs one office manager and two drivers. He owns two dump trucks. Respondent's gross operating revenue for the year 1965 was \$337,402.14. He was served with Minimum Rate Tariffs Nos. 7 and 17, together with all supplements and additions to each.

On March 14, 15, 21 and 28, a representative of the Commission's field section visited respondent's place of business and checked his records for the period from November 1, 1965 to January 31, 1966. The representative testified that approximately 651 freight bills were issued during the review period; that none

of the freight bills complied with applicable documentation requirements; and that because of missing information, it was not possible to determine from said freight bills whether respondent assessed proper rates and charges for the transportation in issue.

The representative testified that he made true and correct photostatic copies of 20 of the hourly service freight bills issued during the review period and that they are all included in Exhibit 1 as Parts 1 through 20 thereof. The witness testified that _____ respondent informed him that everything respondent hauled was either earth or debris from building sites and that all of the hauling was subject to the hourly rates in Minimum Rate Tariff No. 7. He stated that all of the transportation covered by Exhibit 1 was performed by subhaulers who prepared the documentation. The representative explained that Exhibit 2 sets forth the information required by the documentation rule in paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7 which, in his opinion, is missing from the documents in Exhibit 1. There is no allegation in this proceeding that respondent charged less than minimum rates or falsified his documents.

None of the hourly service freight bills included 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 of Minimum Rate Tariff No. 7: (2) capacity of equipment in cubic yards; (5) name of consignor; (6) address of consignor; (9) name of consignee; (10) address of consignee; (11) type of loading; (13) time and location driver reported for work; (14) running time of last trip; (15) unloading time of last trip; (16) overall time; (18) net chargeable time; (21) signature of

consignor. In addition, certain of the documents do not include other information required by paragraph (c). Although time information is shown on the documents, it is not shown in the manner required by paragraph (a). Also, the rule requires that the specific address of the consignor and consignee be shown. Incomplete addresses are not acceptable. All transportation covered by Exhibit 1 was subject to the Highway Carriers' Act.

Respondent testified as follows: New document forms with spaces for filling in all of the information required by the documentation rule (which became effective October 16, 1965) were not available until the beginning of 1966; he now has a supply of the new forms and furnishes them to his own drivers and to his subhaulers; his own drivers and the subhaulers he regularly engages now complete the documents correctly; most occasionally hired subhaulers are continuing to fill out the documents incorrectly; he will furnish each of them with a letter of instructions informing them how to complete the document correctly; the documentation rule is complex and difficult to understand; when a subhauler is used and the subhauler prepares the documentation, it should be the responsibility of the subhauler for any documentation errors; in this connection, the "Sub Hauling Contract" he has with his subhaulers provides in paragraph (6) that the subhauler has exclusive control over its drivers (Exhibit 3).

With respect to the question of whether respondent is responsible for errors or omissions in the hourly service freight bill 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 who 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 of this case.

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 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 sub-hauler 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 and 3737 of the Public Utilities Code.
2. Respondent's operating authority should be suspended, pursuant to Sections 3774 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. 19-54335 issued to James K. Barker, doing business as J. K. Barker Trucking, is 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 28th day of FEBRUARY, 1967.

William L. Bennett President

William J. ...

Paul P. ... 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.