

ORIGINAL

Decision No. 72195

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of FRANK V. COSTA, an individual, doing business as ARTESIA LIVESTOCK TRANSPORTATION CO.

Case No. 8401
(Filed May 3, 1966)

Knapp, Gill, Hibbert & Stevens, by Karl K. Roos,
for respondent.
Tom A. Kardashian, for Great Western Packing
Company, interested party.
William C. Bricca and Frank J. O'Leary, for the
Commission staff.

O P I N I O N

By its order dated May 3, 1966, the Commission instituted an investigation into the operations, rates and practices of Frank V. Costa, an individual, doing business as Artesia Livestock Transportation Co. and later doing business as Frank V. Costa Livestock Transportation.

Public hearing was held before Examiner Mooney on August 4 and 5, 1966, in Los Angeles. Submission was subject to the filing of points and authorities and written closing statement by the Commission staff and respondent's answer thereto if he considered one necessary. The staff's filing was received on September 7, 1966, and no reply has been received. Sufficient time having been allowed to file a reply, the matter is submitted.

C. 8401 ds

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 19-34452.^{1/} He has a terminal in Artesia. Respondent owns and operates ten trucks, twelve full trailers, three semitrailers and three tractors. He employs thirteen regular and five relief drivers, four mechanics, one clerk, two solicitors and an office manager. His gross operating revenues, reported to the Commission for the last three quarters of 1965 and the first quarter of 1966, amounted to \$649,818. Copies of Minimum Rate Tariff No. 3-A and Distance Table No. 5, together with all corrections and additions thereto, were served on respondent.

A representative of the Commission's Field Section visited respondent's place of business in July and September 1965 and checked his records for the period August 1, 1964 through January 31, 1965. He testified that he made true and correct photostatic copies of various documents covering the transportation of cattle, steers and sheep and that the photocopies are included in Exhibits 1 through 6. Exhibit 1 includes 33 parts and relates to transportation performed for Western Cattle Feeders. Exhibit 2 includes 3 parts and relates to transportation performed for Domingo Mendionde. Exhibit 3 includes 11 parts and relates to transportation performed for Great Western Packing Co. Exhibit 4 includes 100 parts and relates to bruise claims paid by respondent in connection with transportation performed for Great Western

^{1/} Frank V. Costa is the only name shown on respondent's permit. During the period covered by the staff investigation herein, he did business under the fictitious name of "Artesia Livestock Transportation Co." He now does business under the fictitious name of "Frank V. Costa Livestock Transportation".

Packing Co. Exhibit 5 includes 52 parts and relates to bruise claims paid by respondent in connection with transportation performed for Colton Cattle and Feed Co. Exhibit 6 includes 5 parts and relates to bruise claims paid by respondent in connection with transportation performed for Santa Ana Packing Co. The representative testified that Exhibit 6 covers all transportation performed for Santa Ana Packing Co. during the review period but that Exhibits 1 through 5 do not cover all of the transportation performed for the designated parties during said period.

The representative further testified that the freight bills in Exhibits 1 (Western Cattle), 2 (Mendionde) and 3 (Great Western) appeared to show undercharges. He stated that they were evidently due to errors in constructive mileage calculations by respondent.

The representative asserted that the bruise claims covered by Exhibits 4 (Great Western), 5 (Colton Cattle) and 6 (Santa Ana) should not have been paid. In each instance, he stated, the procedure set out in paragraph A6 of Items 250 and 251 of Minimum Rate Tariff No. 3-A governing the filing of claims was not followed. He pointed out that subparagraphs d and e of said paragraph provide as follows:

"d. All claims shall be accompanied by paid freight bill, shipping order and delivery receipt, or exact copies thereof, and a verified statement itemizing the extent of loss or damage.

"e. Unless written notice of loss or damage is given to a carrier before or at the time the shipment is unloaded at point of destination, the carrier will be discharged from all liability in respect to any claim for loss and damage."

The representative testified that respondent's records fail to show that a verified statement with the required

C. 8401 ds

attachments was filed with it as required by subparagraph d in connection with any of the claims in Exhibits 4 (Great Western), 5 (Colton Cattle) and 6 (Santa Ana). In addition, he stated that respondent's records do not show that written notice was given on the date of delivery as required by subparagraph e and that respondent admitted this was not done.

Testimony regarding various mileages and the precise location of numerous origins and destinations in Exhibits 1 through 6 was presented by the witness and also by a second staff representative. Each testified regarding locations he had personally observed and distances he had personally checked.

A rate expert for the Commission staff testified that she had taken the sets of documents in Exhibits 1 through 6, together with the supplemental information testified to by the two representatives, and formulated Exhibits 7 through 12, respectively, which show the rate and charge assessed by respondent, the minimum rate and charge computed by the staff, the difference between the two, if any, and the amounts paid for bruise claims. The total amount of the alleged undercharges, the total amount of charges in excess of the applicable minimum charge and the total amount of paid bruise claims shown on the exhibits prepared by the rate expert are as follows:

<u>Exhibit No.</u>	<u>Under-charge</u>	<u>Excess Assessed</u>	<u>Bruise Claims</u>
7 (Western Cattle)	\$389.83	None	None
8 (Mendionde)	36.08	None	None
9 (Great Western)	35.38	None	None
10 (Great Western)	27.87	\$507.37	\$4,464.56
11 (Colton Cattle)	None	175.20	1,893.45
12 (Santa Ana)	8.89	179.02	873.89

The general manager of Great Western Packing Co. testified that all bruise claims filed with respondent were in writing; that he was not aware of the specific tariff provisions regarding claims until after the staff investigation; that in the last two months the company has obtained its own equipment for hauling cattle within the State; and that for-hire carriers are now used only to handle overflow traffic.

With respect to the bruise claims in Exhibit 4, the general manager testified as follows: Generally cattle are received late in the afternoon for slaughter the next day; when a shipment is received, it is virtually impossible to determine whether the animals are bruised because of their hides; most shipments arrive after the plant has closed and there is no representative of Great Western present to give the required written notice to the carrier of any obvious bruises on the animals; there are six or seven pens at the plant; the driver will find an empty pen and unload the animals into it; the animals are checked the next morning and any bruises noted are brought to the carrier's attention; even if the bruise is obvious, the extent of loss cannot be determined until the animal is slaughtered; most bruises, however, are not apparent until the animal is slaughtered; it can readily be determined whether the bruise is fresh and occurred during transportation; most bruises during transportation are to the loin and back which are the most valuable parts of the carcass; a bruise claim is not filed unless the injury is excessive, and it is apparent that it was due to carelessness on the part of the carrier; other meat packers in the area use generally the same procedure in handling claims.

The office employee of respondent testified that he had personally checked the actual mileage between the main gate which leads from the public highway onto the private property of Western Cattle, the origin of all 33 shipments covered by Exhibit 7 (Western Cattle) and the mileage basing point for Blythe in an automobile on which the odometer had been calibrated. He stated that the distance shown on the odometer between the two points was 8.2 actual miles; that in accordance with paragraph (a) of Rule 4 of Distance Table No. 5 he multiplied the actual mileage by the factor 1.3 to determine the constructive distance;^{2/} and that the resulting distance between the points was 10.66 constructive miles. Both the witness and the staff agreed that all destinations in Exhibit 7 are located within Metropolitan Zone 235 and that the constructive distance between the mileage basing point for Blythe and said MZ is 248 constructive miles. The witness asserted that the total constructive distance from the origin to MZ 235 is 258.66; that the rate of 45 cents per 100 pounds assessed by respondent for the transportation covered by Exhibit 7 is the correct minimum rate for distances over 240 but not over 260 constructive miles; and that there are no undercharges on this transportation. The witness admitted that it was necessary to travel along a private road on Western Cattle's property for a distance of approximately one mile from the main gate to a second gate where the cattle loading chutes are located; that the cattle are loaded on the trucks at said chutes; and that he did not include the distance traveled on the private road in his

^{2/} Paragraph (a) provides that the constructive distance between two points other than two mileage basing points shall be 1.3 times the actual highway mileage along the shortest continuous route, subject to certain exceptions not involved here.

C. 8401 ds

constructive mileage calculation. Respondent's counsel argued that the one mile distance traversed on the private road need not be included in the constructive mileage calculation.

It is the staff position that where a shipment has traversed both private and public roadways the constructive distance over both roadways is to be included in the mileage calculation. According to the record, the initial staff witness had measured the distance between the second gate on the private road and the mileage basing point for Blythe in a State automobile on which the odometer had been calibrated and determined that the distance was 9.5 actual miles. The staff rate expert testified that she multiplied the 9.5 actual miles by the 1.3 factor in Rule 4 of the distance table and determined the constructive miles between said points to be 12.35. The total constructive mileage from origin to destination shown in the staff's Exhibit 7 (Western Cattle) for each of the parts is 260.35. This was determined by adding the 12.35 constructive miles from the point of loading to Blythe plus the 248 constructive miles from Blythe to MZ 235. The rate of 48 cents per 100 pounds alleged by the staff to be applicable is the minimum rate for distances over 260 and not over 280 constructive miles.

Respondent's employee testified as follows regarding the bruise claims in issue: The drivers have informed him that there is no one from the packing houses present when deliveries are made; it is unreasonable to expect the packing houses to note the condition of animals on the shipping document when delivery is made; since the staff investigation, respondent has lost all but a few of his packing house customers because of the complex paper work required for bruise claims; many of the packing houses have obtained equipment and are performing their own transportation.

Discussion

We concur with the staff that when both private and public roadways are traversed between the origin and destination of a shipment, the distances traversed over both classifications of roadways must be included in determining the constructive mileage.

The rule governing the "Computation of Distances" in Item 80, Tariff No. 3-A, provides as follows:

"Distances to be used in connection with distance rates named herein shall be the shortest resulting mileage via any public highway route computed in accordance with the method provided in Distance Table No. 5".

It is the position of the respondent that any mileage traveled on private roads may be excluded when computing distance over which the rate is to be applied. Such an exclusion was obviously not intended because its application would make meaningless any costs of transportation based on mileage rates. Although Item 80, Minimum Rate Tariff No. 3-A, quoted above, may require clarification, it seems to us any doubts would result only if the section were read alone. For example, Section 2 of Tariff No. 3-A contains distance commodity rates which, pursuant to the provisions of Item 30 of the tariff, "...apply for transportation of shipments of livestock between all points within the State of California...." (emphasis added).^{3/} In addition, elimination of traversings on private roads would make meaningless the definition of "POINT OF ORIGIN" and "POINT OF DESTINATION" in Item 10 of the tariff and would render unworkable the rules pertaining to distances contained in Items 170 (Split Pickup), 180 (Split Delivery) and 220-221 (Alternative Application of Combinations With Common Carrier Rates).

^{3/} Certain exceptions are listed which are not pertinent here.

Paragraph (l) of Item 10 defines POINT OF ORIGIN as:

"...the precise location at which livestock is physically delivered by the consignor or his agent into the custody of the carrier for transportation...."

Paragraph (k) of Item 10 defines POINT OF DESTINATION

as: "...the precise location at which livestock is tendered for physical delivery into the custody of the consignee or his agent...."

The staff has correctly computed the constructive mileage for the transportation in Exhibit No. 7 (Western Cattle). The respondent will be directed to collect the undercharges disclosed by the staff.

With respect to the bruise claims in Exhibits 10 (Great Western), 11 (Colton Cattle) and 12 (Santa Ana), the claim procedure set out in paragraph A6 of Items 250 and 251 of Tariff No. 3-A has not been followed. The provisions governing claims were added to the tariff to prevent spurious claims for loss and damage. (53 Cal.P.U.C. 555 (1954).) Unless the required procedure is adhered to, a carrier may not honor claims even if damage was actually caused by the carrier. In the circumstances, respondent will be directed to collect the bruise claims in issue from the parties to whom they were paid.

The record does not establish whether any of the bruise claims herein were valid claims caused by the negligence of respondent, or whether they were spurious. We will require respondent to collect the amounts he paid out in claims because the claimants failed to comply with the aforementioned tariff rule.

We concur with the staff that, pursuant to Section 3800 of the Public Utilities Code, a fine in the amount of the undercharges found herein should be imposed on respondent. We do not agree with the staff that the amount paid in bruise claims should be included. As stated above, the record establishes that said claims were handled in an improper manner but does not establish whether they were spurious or valid. Furthermore, we do not agree with the staff that respondent's operating authority should be revoked. However, because respondent ignored the tariff provisions relating to claims, an additional fine, pursuant to Section 3774 of the Code, in the amount of \$2,500 should be imposed on respondent. The Commission takes official notice of two prior proceedings involving this respondent. Decision No. 58854, dated August 4, 1959, in Case No. 6219 suspended for five days the operating authority of the respondent. Decision No. 64835, dated January 22, 1963, in Case No. 7365 imposed a ten-day suspension of operating authority or in the alternative payment of a \$5,000 fine (fine paid).

It is noted that on certain of the shipments herein respondent has assessed a charge in excess of the charge provided in Tariff No. 3-A. The rates and charges set forth in the tariff are minimum. The law requires a highway permit carrier to collect not less than the established minimum rate and charge on each and every shipment it transports. While there is no prohibition against charging above the minimum, charges in excess of the minimum on certain shipments may not be offset against undercharges on other shipments. Furthermore, claims and transportation charges should be treated as separate transactions. The charges

above the minimum may not be offset against the claim payments respondent is directed to recover.

Findings and Conclusions

After consideration, the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 19-34452.

2. Respondent was served with Minimum Rate Tariff No. 3-A and Distance Table No. 5, together with all corrections and additions to each.

3. A logical construction of Minimum Rate Tariff No. 3-A requires the inclusion of distances traversed on private roadways, as well as the distances traveled on public roads or publicly used roads, in constructive mileage determinations.

4. Respondent assessed and collected less than the established minimum rate and charge in the amount of \$389.83 for the transportation covered by Exhibit 7 (Western Cattle).

5. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits Nos. 8 (Mendionde), 9 (Great Western), 10 (Great Western) and 12 (Santa Ana), resulting in undercharges in the total amount of \$108.22.

6. Charges above the established minimum rates on certain shipments may not be offset against charges below the established minimum rates on other shipments nor may they be offset against paid bruise claims respondent is directed to recover.

7. Respondent paid claims in the total amount of \$7,231.90 in the instances set forth in Exhibits 10 (Great Western), 11 (Colton Cattle) and 12 (Santa Ana).

8. The claim procedure set forth in paragraph A6 of Items 250 and 251 of Minimum Rate Tariff No. 3-A was not followed in connection with any of the claims referred to in Finding No. 7.

9. The payment by respondent of the claims referred to in Finding No. 7 was illegal.

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

1. The payment by respondent of claims which were not presented in accordance with the procedure set forth in paragraph A6 of Items 250 and 251 of Minimum Rate Tariff No. 3-A is illegal, and respondent should discontinue this practice.

2. Respondent violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code.

3. Respondent should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$498.05 and in addition should pay a fine pursuant to Section 3774 of the Code in the amount of \$2,500.

The Commission expects that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and the illegally paid claims. 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 and illegally paid claims, or has not acted in good faith, the Commission may 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 \$2,998.05 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall take such action, including legal action, as may be necessary to collect the amount of undercharges and the amount of illegally paid claims 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 and illegally paid claims, and in the event the undercharges or illegally paid claims ordered to be collected 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 or illegally paid claims remaining to be collected and specifying the action taken to collect such undercharges or illegally paid claims, and the result of such action, until such undercharges or illegally paid claims 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.

5. Respondent shall cease and desist paying claims in connection with the transportation of livestock unless they have

C. 8401 ds

been presented in accordance with the procedure set forth in paragraph A6 of Items 250 and 251 of Minimum Rate Tariff No. 3-A.

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 MARCH, 1967.

[Signature]
President

[Signature]

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Commissioners