

ORIGINAL

Decision No. 72327

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of ALL COUNTIES EXPRESS, INC., a corporation.

Case No. 7924
(Filed July 12, 1966)

Investigation on the Commission's own motion into the operations, rates and practices of ALL COUNTIES EXPRESS, INC., a corporation.

Case No. 8470
(Filed July 12, 1966)

Dooley & Dooley, by David M. Dooley, for respondent.
W. C. Bricca and J. B. Hannigan, for the Commission staff.

O P I N I O N

By its orders dated July 12, 1966, the Commission instituted an investigation into the operations, rates and practices of All Counties Express, Inc. (Case No. 8470) and reopened Case No. 7924 to determine whether All Counties Express, Inc. had complied with the order in Decision No. 68204 in Case No. 7924.

A public hearing was held before Examiner Porter on December 15, 1966, and the matter was submitted.

Respondent presently conducts operations pursuant to radial highway carrier and city carrier permits. Respondent has a terminal at 1111 Carpentier Street, San Leandro, California, and a second one in Long Beach. As of May 1965, respondent owned and operated 6 tractors, 1 truck, 1 35-foot van trailer, 17 semi-trailers and 5 full trailers. On the average it employs 3 drivers, 1 bookkeeper and a dispatcher. The operating revenue for the second, third and fourth quarters of 1964 and first quarter of

C. 7924, 8470 ds

1965 amounted to \$259,463. Copies of appropriate tariffs were served upon respondent.

Respondent moved to dismiss Case No. 7924 upon the ground that Public Utilities Code Section 3737 was not applicable to the reopening of a case for determination of whether respondent failed to comply with an order of the Commission and that Section 3803 of the Public Utilities Code should be the charging section. Respondent also moved to dismiss Case No. 8470 on the ground that the figure one-third of one percent of gross operating revenue was used as the amount due the Commission rather than a lesser amount which was in effect during a period of a portion of the transportation herein involved.

There was no dispute as to the essential facts involved in these two cases. In the reopened Case No. 7924, it was agreed that respondent had failed to examine its records for the purpose of ascertaining all undercharges; had not filed a proper report of such undercharges with the Commission; had not collected all undercharges nor informed the Commission as to action taken to collect such undercharges as ordered by the Commission in Decision No. 68204 in Case No. 7924.

In Case No. 8470, it was agreed that the transportation reflected in Exhibits Nos. 1 through 7 has in fact been performed. The records for this transportation were deliberately concealed from the Commission representative at the time of his examination of respondent's records. The transportation was discovered by the Commission staff after exhaustive investigation outside the respondent's records. There was no proper documentation of this transportation maintained by the respondent; the proper rate for this transportation had not been assessed by respondent; the

staff's Exhibits Nos. 1 through 7 are correct and undercharges shown therein should have been collected.

The transportation reflected in Exhibits Nos. 1 through 7 was not included in the respondent's quarterly reports and no fees were paid to the Commission on the transportation as required by Sections 5003 and 5003.1 of the Public Utilities Code.

The respondent presented evidence that, since the investigation by the staff, it has collected some of the undercharges and instituted suit for the collection of the others.

After consideration the Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits.
2. Respondent was served with Minimum Rate Tariff No. 2, Distance Table No. 4, and with all supplements and additions thereto.
3. The Commission has the inherent power to reopen a proceeding to determine whether there is compliance with its decisions and to decide what further action, if any, should be taken. Section 3803 of the Public Utilities Code is not applicable to such an order to reopen, since it provides for the imposition of a penalty for violations. Such suits are brought in the superior courts. (Sec. 3807)
4. It is a matter of arithmetic computation as to the amount of fee due the Commission for transportation performed during certain periods of time. ✓
5. Respondent failed to comply with the order in Case No. 7924, Decision No. 68204. ✓
6. Respondent concealed records from the Commission representative. ✓
7. Respondent failed to file a statement showing the proper total of gross operating revenues from the transportation of property; failed to issue shipping documents for all shipments or ✓

issue proper shipping documents and charged and collected less than the minimum rates established by this Commission.

Based upon the foregoing findings of fact the Commission concludes that the motions for dismissal should be denied and that respondent violated Sections 5003, 5003.1, 3737, 3668 and 3664 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$2,623.57 (the amount of undercharges shown in Exhibits 1 through 7) and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$5,000.

The Commission expects that respondent 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 into the measures taken by respondent and the results thereof. If there is reason to believe that respondent, or its 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. The motions to dismiss are denied. ✓
2. Respondent shall pay a fine of \$7,623.57 to this Commission on or before the fortieth day after the effective date of this order. ✓
3. Respondent shall take such action, including legal action, ✓ as may be necessary to collect the amounts of undercharges set forth herein (Exhibits 1 through 7) and shall notify the Commission in writing upon the consummation of such collections.

4. Respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and 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 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.

5. 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.

6. Respondent shall pay to this Commission the quarterly fees due and owing.

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 18th day of APRIL, 1967



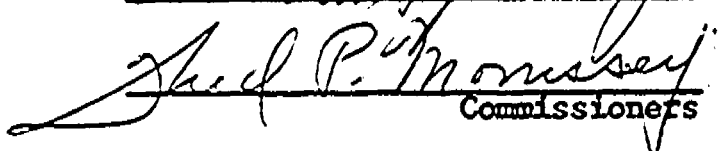
President



Commissioners



Commissioners



Commissioners