

ORIGINAL

Decision No. 72427

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of JAT TRUCKING COMPANY, INC.; ANAHEIM FOUNDRY COMPANY; MORRIS BEIGEL, ERNIE J. BEIGEL, and CECIL M. SILLS, individuals, WILLIAM L. ADAMS, dba ADAMS TRUCKING COMPANY, and HARRY DOUGLAS RILEY, JR., dba RILEY AND SON TRUCKING.

Case No. 8591

Russell & Schureman, by R. Y. Schureman, for Jat Trucking Company; Harry D. Riley, for Riley & Son Trucking; William L. Adams, for Adams Trucking Company, respondents.
John C. Gilman and E. H. Hjelt, for the Commission staff.

O P I N I O N

By its order dated February 7, 1967, the Commission instituted an investigation into the operations, rates, and practices of Jat Trucking Company, Inc., Anaheim Foundry Company, Morris Beigel, Ernie J. Beigel, and Cecil M. Sills, individuals, William L. Adams, dba Adams Trucking Company, and Harry Douglas Riley, Jr., dba Riley and Son Trucking.

A public hearing was held before Examiner DeWolf at Los Angeles on March 1, 1967, and was submitted on the same date subject to the filing of late-filed Exhibit No. 4, which has been received.

The order alleges that respondent carriers may have violated the requirements of their permits by using a device by

which Anaheim Foundry Company, a corporation, obtained transportation of property at less than 100 percent of the minimum rates and charges and that respondent carriers have thereby violated Sections 3571, 3667, 3669 and 3737 of the Public Utilities Code.

Jat Trucking Company, Inc., appeared by its attorney and moved to dismiss the proceeding as to all the other respondents named in the order. William L. Adams and Harry Douglas Riley, Jr., have appeared and testified that the undercharges alleged herein as to each of them have been fully paid by Jat Trucking Company, Inc. The investigation will be dismissed as to these two respondents, Adams and Riley, Jr.

It was stipulated that respondent Jat Trucking Company, Inc., hereinafter referred to as Jat, holds Radial Highway Common Carrier Permit No. 30-3432 and Highway Contract Carrier Permit No. 30-2997. On July 26, 1960, Highway Contract Carrier Permit No. 30-2997 was transferred from Jat Trucking Company, a partnership, to Jat Trucking Co., Inc., a corporation, reflecting the restrictions imposed by Decision No. 60079. At the same time the corporation was issued Radial Highway Common Carrier Permit No. 30-3242 subject to the same restrictions. Decision No. 60079, dated May 9, 1960, provides that the Highway Contract Carrier Permit No. 30-2997 is subject to a restriction which prohibits the carrier, whenever it engages other carriers for the transportation of the property of Anaheim Foundry Company or of the Universal Supply Company or Silco Machinery Company, from paying such other carriers rates less than the minimum prescribed by the Commission for such transportation. Attorney for Jat Trucking Company, Inc., stipulated that it was served with Minimum Rate Tariff No. 2 and Distance Table No. 5, together with

all corrections and additions to each and that the rates applied to all transportation involved in the investigation herein.

Respondent Jat has been operating with two tractors, three trucks and three trailers leased to it by the Anaheim Foundry Company. Jat employed two drivers who were paid by it and other drivers who were paid by the Anaheim Foundry Company. Jat shared the office, office manager, bookkeepers and employees of the Anaheim Foundry Company. Jat's gross revenue for the fiscal year of 1966 amounted to \$70,647.

It was further stipulated by the Commission staff and respondent Jat that Exhibits 1, 2, 3 and late-filed Exhibit 4 be received in evidence without cross-examination.

The Commission representative testified that he examined the records of respondent Jat between the dates of May 16, 1966 and May 20, 1966, and selected therefrom eight transactions set forth in Exhibit 1, which show undercharges and came to the conclusion that these undercharges arose from an agreed flat rate payment bottomed on round figures. He testified that he was not advised who was responsible for the erroneous ratings. The amount of underpayment, dates, and charges of all of the items set forth in Exhibit 1 are as follows:

<u>Part</u>	<u>Date</u>	<u>Minimum Rate and Charge</u>	<u>Paid Subhauler</u>	<u>Under- payment</u>
1	1--3-66	\$332.06	\$225.00	\$107.06
2	1--3-66	202.00	150.00	52.00
3	3--3-66	339.89	200.00	139.89
4	3--7-66	396.28	225.00	171.28
5	3-18-66	297.70	150.00	147.70
6	3-24-66	255.07	200.00	55.07
7	3-25-66	395.55	225.00	170.55
8	3-30-66	272.25	200.00	72.25
				<u>915.80</u>

Respondent Jat, offered Exhibit 2 to show that it, itself, found underpayments to Apache Freight Lines, the successor to

Riley & Sons Trucking, in the amount of \$685.76 not involved in this proceeding and that this sum and the \$72.25 referred to in Part 8 of Exhibit 1 had been paid to Apache before the hearing.

Exhibit 3 is a copy of a statement of William L. Adams listing the undercharges of Parts 1 through 7 of Exhibit 1 with itemized copies of each bill attached. Late-filed Exhibit 4 is a copy of a canceled check of Jat to Adams Trucking Company in the amount of \$843.55. Adams testified that these are the undercharges described in Parts 1 through 7 of Exhibit 1 and that all of said amounts have been paid to him.

Cecil M. Sills testified that he is vice president of Jat and Anaheim Foundry Company and that the two companies are under common control, are owned and operated by the same individuals and frequently interchange offices, supplies, and employees, in substantially the same manner as described in Decision No. 60079, dated May 9, 1960. He testified that he was familiar with the order that Jat must pay minimum rates to subhaulers for Foundry hauls and that it has been and is the intent of Jat to comply with the order in the past and in the future. He testified that he had not been fully aware of what constituted rail shipments; that the violations were not willful and the undercharges were paid to the subhaulers as soon as he discovered them. He testified that the errors were made by billing in round figures and confusing rail rates with master billing when using the rail spur advantage; and that there was no intent to secure the transportation for Anaheim Foundry Company at less than minimum rates.

He testified that the errors in rating and billing were discovered by Miller Traffic Service and that in the future this service will audit all freight bills in order to make certain that no undercharges will occur.

Findings of Fact

1. Respondent Jat is operating pursuant to a Radial Highway Common Carrier Permit No. 30-3432 and Highway Contract Carrier Permit No. 30-2997.

2. Respondent Jat had received Minimum Rate Tariff No. 2 and supplements, and Decision No. 60079, dated May 9, 1960, prior to the time the violations found herein occurred.

3. Jat has failed to observe the direction and order of the Commission in Decision No. 60079, and its permits as to transportation performed for Foundry by paying other carriers less than 100 percent of the applicable minimum rates and thereby has violated Section 3667 of the Public Utilities Code.

4. The affairs of Jat and Foundry were jointly conducted and operated. Jat and Foundry interchange offices, services and employees and are corporations having substantially the same ownership, direction and control.

5. The other carriers named have performed transportation for Jat and Foundry at rates and charges less than those established by the Commission in its Minimum Rate Tariff No. 2; that the amount of the undercharges disclosed by this proceeding is \$915.80 but that all of these undercharges have been paid to the carriers involved herein.

The Commission concludes that:

1. Respondent Jat violated Sections 3737, 3667 and 3669 of the Public Utilities Code.

2. Respondent Jat should pay a fine in the sum of \$1,500 pursuant to Section 3774 of the Public Utilities Code and be directed to cease and desist from failing to comply with the restrictions in its permits.

O R D E R

IT IS ORDERED that:

1. Respondent Jat Trucking Company, Inc., a corporation, shall pay a fine of \$1,500 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent Jat Trucking Company, Inc., a corporation, shall cease and desist from paying other carriers less than 100 percent of the applicable minimum rates as to any transportation performed on behalf of Anaheim Foundry Company or of directly or indirectly paying any rebates or allowances to any shippers or their employees for whom it performs transportation services.

3. The investigation is discontinued as to William L. Adams, doing business as Adams Trucking Company; and Harry Douglas Riley, Jr., doing business as Riley and Son Trucking.

4. The Secretary of the Commission is directed to cause personal service of this decision to be made upon respondents herein.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 16th day of MAY, 1967.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners