

**ORIGINAL**

Decision No. 72536

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
motion into the operations, rates and )  
practices of JOSEPH L. DUARTIE, an )  
individual, doing business as )  
DUARTIE TRUCK SERVICE. )

Case No. 8559

Floyd M. Hall, for respondent.  
B. R. Garcia, for Setzer Forest Products, Inc.,  
interested party.  
William C. Bricca, Counsel, and E. E. Cahoon, for  
the Commission staff.

O P I N I O N

By its order dated November 1, 1966, the Commission instituted an investigation into the operations, rates and practices of Joseph L. Duarte, an individual, doing business as Duarte Truck Service.

A public hearing was held before Examiner Fraser on January 10, 1967, at Sacramento. A late-filed exhibit has been received and the matter is ready for decision.

Respondent presently conducts operations pursuant to radial highway common carrier, highway contract carrier and city carrier permits. Respondent has a single terminal in Sacramento, California. He owns and operates eleven trucks and nineteen trailers. He employs nine drivers, a rate man and a mechanic. His gross revenue for the four quarters ending with the third quarter in 1966 was \$313,964. Copies of the appropriate tariff and distance tables were served upon the respondent.

A representative of the Commission's Field Section visited respondent's place of business from May 2 through 5, 1966, and checked his records for the period from August 1, 1965 through March 31, 1966, inclusive. The underlying documents relating to 81 shipments were taken from respondent's files and photocopied. Said photocopies were submitted to the Rate Analysis Unit of the Commission's Transportation Division. Based upon the data taken from said photocopies rate studies were prepared and introduced in evidence as Exhibits 1 and 2. Said exhibits reflect purported undercharges in the amount of \$2,000.25. Parts 1 through 44, inclusive, (Exhibits 1 and 3) involve shipments to a consignee in Firebaugh which the respondent considers "on rail" and the staff classifies as "off rail". Parts 45 through 72, inclusive, (Exhibits 1 and 3) involve shipments to the Oxnard installation of the consignee involved on the first 44 parts. The consignee receives rail shipments in Oxnard, but the staff maintains that all trucks deliver at a lot located one block from the rail facilities and therefore off rail. Part No. 73 (Exhibits 1 and 3) involves a delivery to an off-rail consignee in Yuba City. This part was not contested. Parts 1 through 7 of Exhibits 2 (and 4) involve shipments for a different consignor. The two "off-rail" consignees involved in the seven shipments were rated as "on rail" by the respondent. Parts 55 and 74 of Exhibit 1 were dismissed at the hearing, leaving 79 alleged violations, all based on the failure to assess "off-rail" charges at destination, or to use a "Class B" or commodity rate where the latter rates were lower on the transportation to the off-rail destinations.

Parts 1 through 7 in Exhibits 2 and 4 were not contested by the respondent. The consignee in the first 44 parts of Exhibit 1 is California Pine Box Distributors (hereinafter called Calpine), which

is located in Firebaugh, California. The Calpine premises extend from 13th Avenue southerly to 15th Avenue. Both streets end at the west boundary of Calpine and border the property on the north and south. Fourteenth Avenue is parallel to, between and equidistant from the other two avenues. It ends at the main gate of Calpine, then extends easterly--with houses on each side--to "M" Street (Exhibit 5). The Calpine yard is surrounded by a high wire fence, with a gate on each of the three avenues previously mentioned. The gate on 15th Avenue is across the street from property owned by Bud Antle, Inc. (hereinafter called Antle), a produce dealer. The Antle property has two rail spurs which extend from the main line of the Southern Pacific Company. The spurs are parallel and extend down the easterly and westerly sides of a platform which is apparently used to facilitate loading and unloading produce. Calpine argued that it has arranged to receive rail shipments on the Antle spur tracks and is therefore on rail.

A traffic consultant (for Calpine) testified that he shipped a car by rail from Sacramento to Calpine in Firebaugh about a week prior to the hearing. The car arrived and was unloaded on the westerly spur without difficulty. He stated he does not know how often Calpine shipments come by rail or when the last shipment was received. He further testified that the use of the spur track was arranged for interstate shipments; that Calpine does not receive many intrastate shipments by rail car although rail traffic may be heavy at times. He stated that box shoo, wood covers and paper could come in by rail car. The witness introduced Exhibits 6 and 7; the former is a one-year lease between Antle and Calpine renewable each year, dated the first day of January 1964, which authorizes Calpine to lease

the Antle premises for the sole and exclusive purpose of loading and unloading merchandise, at a rental of \$150 a year. Exhibit 7 is an agreement between the Southern Pacific Company, Antle and Calpine dated January 1, 1965, which authorizes the latter to use a rail spur constructed on the Antle property under an agreement dated July 1, 1964. A map of the area, dated July 18, 1963 and revised on July 30, 1964, is a part of Exhibit 7. It outlines in red ink the portion of the spur track to be used under the terms of the agreement. The map shows the last 40 feet of what is now the easterly spur track in red and an eight-foot wide platform extending parallel to the spur and about eight feet to the west of the rails. A twenty-foot wide strip to the west of the platform is shaded and identified as "an easement for S.P. tracks". According to the map the rail spur extends to 15th Avenue and the platform ends forty feet short of the street.

The staff representative testified in rebuttal that he viewed and made a sketch of the Antle premises--not to scale (Exhibit 5). He further testified that the last forty feet of spur track which is marked in red on the map attached to Exhibit 7 cannot be used by Calpine. He stated the track ends at 15th Avenue; it has a six-foot high cyclone wire fence, with a foot of barbed wire on top extending from 15th Avenue along the east side of the tracks--six feet from the rails--at least five hundred feet (500) in a southerly direction; this fence also extends to the west along 15th Avenue for about twenty feet; it encloses the north and east sides of the portion of track to be used by Calpine under the terms of Exhibit 7. He stated that the platform extends to within six feet of 15th Avenue along the west side of the spur and it would be difficult, if not impossible, to unload a car on the red outlined stretch of track anywhere but on

the platform which seemed to be designed for unloading produce. He testified that he climbed on the platform and estimated its dimensions; it is four or five feet high and ten feet wide; it has a four-foot wide belt on top, which is three feet off the platform; a fork lift could not get close enough to a car on the red outlined track to unload it. He stated that the entire Antle lot west of the platform is open and flat; there are no fences on this portion of the lot and the second westerly rail spur which parallels the west edge of the platform can be unloaded by a truck, forklift, or by hand, without difficulty. The staff position emphasized the fact that only the last forty feet of the eastern spur on the Antle property was marked in red on the Exhibit 7 map and that this portion of the spur could not be unloaded by a forklift; also, that it is a one-car spot for one freight car. The respondent testified that rail shipments were received by Calpine at the westerly Antle spur and that everything was accomplished to legally authorize Calpine to use the Antle spur. Respondent further noted that he felt justified in considering Calpine on rail. All three parties to the agreement and lease certified that the consignee was on rail.

On Parts 45 through 72 of Exhibit 1 (and 3) the staff rated the shipments as off rail at destination. The destination was the Calpine premises in Oxnard. The staff representative testified Mr. Duartie told him the goods went to Calpine and that an employee of the respondent told him the shipments were delivered to the Williams Shed in Oxnard, which is located on a Southern Pacific Company spur track. He further testified that he visited the Williams Shed on July 20, 1966, and it was then operated by Deardorff and Jackson. Mr. Deardorff advised him that railcars were unloaded at the Shed, but truck shipments were delivered to the Calpine yard,

about a block away. Respondent did not testify but his representative stated that the shipper in Oxnard advised it was on rail; also that it was his understanding the trucks unloaded at the rail point.

#### Discussion

The Calpine premises at Firebaugh are on rail. Goods shipped by rail have been received there and Calpine has a legal right to use the Antle spur to load and unload merchandise. The Calpine receiving area has been extended across the street by the lease and the agreement. A contrary decision would seriously hamper the receivers of goods and might discriminate by preventing certain consignees who receive goods by rail from demanding the rail rate on truck shipments. The staff argument that only the northernmost forty feet of the eastern Antle spur was leased is a strained interpretation. The map attached to Exhibit 7 is dated before the Agreement for Use of Industry Track by Third Party and was drawn prior to the construction of the western spur. The lease covers all of the Antle premises and all rail spurs thereon. It seems evident that the railroad would position a Calpine car anywhere on the Antle property as long as Antle had no objection and the latter's needs were not affected.

The point of delivery on Parts 45 through 72 of Exhibit 1 is off rail. The respondent did not refute the staff testimony and documentary evidence, although a short closing statement was made to the effect that the respondent was told the Oxnard delivery point was on rail.

#### Findings

Based on the evidence we hereby find that:

1. Respondent is engaged in the transportation of property over the public highways for compensation pursuant to Radial Highway Common

Carrier Permit No. 34-235, Highway Contract Carrier Permit No. 57-134 and City Carrier Permit No. 34-3670.

2. Respondent was served with appropriate tariffs and distance tables.

3. The premises of California Pine Box Distributors in Firebaugh, referred to herein, are on rail. The staff ratings on Parts 1 through 44, inclusive, of Exhibit 1 are therefore incorrect and should be disregarded.

4. There are no undercharges on Parts 55 and 74 of Exhibit 1.

5. Respondent charged less than the lawfully prescribed minimum rate in the instances set forth in Parts 45 through (less Part 55) 73 of Exhibit 1 and Parts 1 through 7 of Exhibit 2, resulting in undercharges in the amount of \$914.22.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$914.22, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$250.

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 either respondent or his 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. Respondent shall pay a fine of \$1,164.22 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 amounts of undercharges 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 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, 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.
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.



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 6<sup>th</sup> day of " JUNE ", 1967.

*Arthur E. Mitchell*  
President  
*William W. Bennett*  
*Raymond*  
*William J. Quinn*  
*Paul P. Monahan*  
Commissioners