

**ORIGINAL**

Decision No. 72953

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, rates, )  
and practices of WINANS BROS. )  
TRUCKING CO., a corporation. )

Case No. 8575  
(Filed January 4, 1967)

Marvin Handler, for respondent.

Sergius M. Boikan, Counsel, and J. B. Hannigan,  
for the Commission Staff.

O P I N I O N

By its order issued on January 4, 1967, the Commission instituted an investigation into the operations of Winans Bros. Trucking Company, a corporation, to determine whether respondent violated Sections 3667, 3668, 458, 487, 493 and 494 of the Public Utilities Code, by charging, demanding, collecting, or receiving a lesser compensation for the transportation of property than applicable charges presented in Minimum Rate Tariff No. 2 and California Motor Tariff Bureau Local Freight Tariff No. 2, by illegal consolidation of separate shipments, by the assessment of rail rates to points beyond the zones to which these rates are applicable, by failure to include in its filed tariff, points to which it transported property, and according of service to shippers from facilities not specified therein.

A public hearing was held before Examiner Daly on April 13, 1967, at San Francisco and the matter was submitted on concurrent briefs since filed and considered.

Respondent is a motor carrier operating in the State pursuant to a certificate of public convenience and necessity issued

by Decision No. 53025. It also operates pursuant to Radial Highway Common Carrier Permit No. 1-2928 and Highway Contract Carrier Permit No. 45-819. Respondent's main place of business is in Redding, California. It owns and operates 113 units of equipment, employs 55 individuals, including drivers and dispatchers, as well as maintenance and office personnel. Terminals are maintained at Redding and Stockton.

On March 22, 1966, a representative of the Commission staff visited respondent's Redding office and conducted an investigation of respondent's operations for the period September 1, 1965 to and including March 18, 1966. The supporting documents relating to 14 shipments (Exhibit No. 1) were submitted to the Commission's Rate Analysis Section. An analysis was made and the results thereof were set forth in Exhibits Nos. 2 through 7, inclusive. Said exhibits indicate total undercharges in the amount of \$2,269.71.

Exhibit No. 2

Exhibit No. 2 involves four shipments transported by respondent pursuant to its certificated authority and subject to its filed tariff as set forth in California Motor Tariff Bureau Local Tariff No. 2. Said shipments were transported for the Dee Lumber, Inc., located at Redding. One shipment was delivered to the Anawalt Lumber Company, located at Pacoima; the other three shipments were delivered to the Tarzana Lumber Co., located at Tarzana.

In each instance respondent applied a rail rate and in each instance the staff found that respondent failed to assess off-rail charges at point of origin and at point of destination. The record indicates that the Dee Lumber Company is located approximately

100 feet from a team track. Mr. Joseph Derrah, of the Dee Lumber Company, testified that although he leased no property on the team track he was told by a representative of the Southern Pacific Company that he could use the track facilities as though they were his own. He further testified that he had used the track for many years and had considered his company to be on rail, particularly when a prior investigation of the company premises by a member of the Commission staff had failed to inform him to the contrary.

Although the consignees of these four shipments were actually on rail, the staff assessed undercharges as though they were off rail because Pacoima and Tarzana were not specifically named in respondent's tariff nor did the tariff provide for an intermediate point rule.

In addition, two of these shipments were picked up on separate dates and improperly consolidated. Respondent's tariff does not contain a provision for the transportation of multiple-lot shipments.

The total undercharges set forth in Exhibit No. 2 amount to \$751.68.

Exhibit No. 3

Exhibit No. 3 relates to five shipments transported for the E. L. Reitz Company from a location which is on the site formerly occupied by the Rio Lumber Company at Truckee. The Rio Lumber Company was destroyed by fire. These shipments were also transported pursuant to respondent's certificated authority and according to the staff represent violations of respondent's published tariff in that off-rail charges at point of origin were not assessed in applying the rail rates and because said shipments were picked up on separate dates and improperly consolidated.

According to the record, Mr. Frank Winans started serving from the Rio Lumber Company site in 1962, when it was the Arkley Lumber Company. Mr. Winans testified that at that time he visited the premises and was told that the company had a lease covering use of a spur track located approximately 200 feet from the yard. The record does not indicate whether Rio Lumber Company has any leasehold interest in the spur track.

With respect to the consolidation of shipments, respondent argues that in the absence of a multiple-lot shipment rule in its tariff there is no restriction on the time within which a shipment must be picked up as long as all other requirements of a shipment are complied with, i.e., the freight is tendered by one shipper on one shipping document at one point of origin at one time for one consignee at one point of destination.

The staff argues that all shipments must be picked up within one calendar day unless a tariff provides for the transportation of multiple-lot shipments, in which case all pickups must be completed within two calendar days, excluding Saturdays, Sundays and holidays. The multiple-lot shipment rule is, according to the staff, a grant of authority rather than a limitation and cites as authority therefor Decision No. 57717 dated December 16, 1958, in Case No. 6031, wherein the Commission stated:

"It is not the question of whether the tariff prohibits the method of rating utilized that controls, it is, on the other hand, whether the tariff authorizes it. The tariff filed by a highway common carrier is not a limitation of power, but rather a grant of it."

Even respondent does not rely too heavily on its broad interpretation of a "shipment" to justify the transportation of

multiple-lot shipments, because it has since amended its tariff to include a multiple-lot rule with the usual two-day pickup requirement. The staff correctly states the Commission's position.

The undercharges specified in Exhibit No. 3 amount to \$945.85.

Exhibit No. 4

The two shipments covered by Exhibit No. 4 were transported pursuant to respondent's permitted authority and represent violation of the multiple-lot rule as set forth in Minimum Rate Tariff No. 2 in that on one shipment respondent failed to prepare a master bill of lading before or at the time of the first pickup and in the case of the other shipment respondent failed to make all pickups within the required two-day period.

Respondent was of the opinion that the master bill of lading had been prepared before the first pickup, but through inadvertence was misdated.

The total undercharges amount to \$103.59.

Exhibit No. 5

This involves a multiple-lot shipment that was not picked up within the two days required by Minimum Rate Tariff No. 2. According to respondent a subhauler picked up the second portion of the load and failed to do so within the specified time.

The total undercharge is \$39.50.

Exhibit No. 6

This involved a multiple-lot shipment transported from Torrance to the San Luis Dam at Los Banos. Here again, according to the documentation, a master bill of lading was not prepared by the respondent before or at the time of the first pickup nor were

all component parts of the shipment picked up within two days as required by Minimum Rate Tariff No. 2.

Respondent contends that all shipments were picked up as required, but that delivery was delayed until line haul equipment was available.

The Commission must be guided by the written document in the absence of conclusive evidence to the contrary, otherwise parole evidence could be used to explain away all violations.

The total undercharge was \$164.79.

Exhibit No. 7

The shipment was transported for Etiwanda Steel Producers, Inc. and moved from Etiwanda to Sacramento. The documentation indicates that the first pickup was made on Friday, August 27, 1965, with other pickups on August 30 and 31, 1965. Because all pickups were not made within two days, with allowance being made for the weekend, the staff rated the pickup made on August 31, 1965, as a separate shipment. Respondent contends that Etiwanda closely supervises all pickups and is very strict about pickup being made within the required time. Respondent further contends that the August 31 date was a delivery date and not a pickup date. In addition respondent failed to assess an off-rail charge at destination.

Here again respondent is expressing an opinion contrary to the written documents.

The total undercharge is \$264.30.

In mitigation respondent introduced evidence to show that it has attempted to correctly apply its tariff rates, but due to the death of its rate consultant and publisher in March 1966, the tariff

did not contain all of the provisions which respondent intended it to have, particularly with respect to rules pertaining to intermediate application and multiple-lot shipments. A new tariff adviser and publisher has been retained by respondent who testified that he has since prepared supplements to the tariff covering many of the violations herein considered. Respondent claims that all personnel have been instructed to assess rates in conformity with the applicable tariff; however, it is difficult to obtain trained personnel in the handling of tariffs, particularly in the Redding area.

The staff argues that although these violations are of a technical nature many are similar to prior violations of respondent as found by the Commission in Decision No. 67291 in Case No. 7172. After considering the steps recently taken by respondent to correct its tariff deficiencies and in view of the fact that the present violations are less serious than in the prior proceeding the staff recommended a penalty in the amount of \$1,000.

After consideration the Commission finds that:

1. Respondent is presently engaged in the transportation of property both as a certificated and permitted carrier.
2. During the period September 1, 1965 and March 18, 1966, respondent transported 14 shipments which are the subject of the instant investigation.
3. Said 14 shipments resulted in violations of either respondent's published tariff as set forth in California Motor Tariff Bureau Local Freight Tariff No. 2 or Minimum Rate Tariff No. 2 in that:

- (a) Respondent failed to assess off-rail charges at point of origin as more specifically set forth in Exhibits Nos. 2 and 3;
- (b) Respondent assessed rail rates to points not specified in its tariff and failed to assess an off-rail charge at point of destination as more specifically set forth in Exhibits Nos. 2 and 7;
- (c) Respondent improperly consolidated for rating purposes shipments picked up on different days as more specifically set forth in Exhibit No. 2, Parts 2 and 4 and Exhibit No. 3;
- (d) Respondent failed to prepare at or before the time of the first pickup of a multiple-lot shipment a master bill of lading as more specifically set forth in Exhibits Nos. 4 and 5; and
- (e) Respondent failed to pick up multiple-lot shipments within two calendar days as more specifically set forth in Exhibit No. 4, Part 2 and Exhibits Nos. 5, 6 and 7.

4. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits Nos. 2, 3, 4, 5, 6 and 7 resulting in undercharges in the amount of \$2,269.71.

The Commission, therefore, concludes that respondent has violated Sections 3667, 3668, 458, 487, 493 and 494 of the Public Utilities Code and should pay a fine pursuant to Sections 2100 and 3800 of the Public Utilities Code in the amount of \$2,269.71 and in addition thereto respondent should pay a fine pursuant to Sections 1070 and 3774 of the Public Utilities Code in the amount of \$1,000.

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 either 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. Respondent shall pay a fine of \$3,269.71 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 23rd  
day of AUGUST, 1967.

[Signature]  
President  
[Signature]  
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Commissioners