

ORIGINAL

Decision No. 73090

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of CENTRAL COAST TRUCK SERVICE, INC., a corporation.

Case No. 8633

Martin J. Rosen, for respondent.
Larry Borden, for Safeway Stores, Inc., interested party.
David R. Larrouy, Counsel, and
Edward Hjelt, for the Commission staff.

O P I N I O N

By its order dated May 23, 1967, the Commission instituted an investigation into the operations, rates and practices of Central Coast Truck Service, Inc.

A public hearing was held before Examiner Gravelle on July 13 and 14, 1967 at Watsonville.

Respondent presently conducts operations pursuant to a certificate of public convenience and necessity as a highway common carrier granted in Decision No. 69927 (Application No. 47853), holds Radial Highway Common Carrier Permit No. 44-1425 and Highway Contract Carrier Permit No. 44-1430. Respondent has terminals in Watsonville and Los Angeles, employs forty-two individuals, and operates seventeen tractors, six trucks and twenty insulated van type semi-trailers. Its gross operating revenue for the year ending March 31, 1967 was \$1,871,818. Respondent is a party to Local Freight Tariff No. 1 and copies of Minimum Rate Tariffs Nos. 2 and 8 as well as Distance Table No. 5 were served upon it.

For a period of eleven days between March 29, 1966 and April 28, 1966, a representative of the Commission's Field Section visited respondent's place of business in Watsonville and checked its records for the period September 22, 1965 through March 22, 1966 inclusive. During said period respondent transported some 6,800 shipments. Copies of certain of the shipping documents checked were photocopied by the staff representative and forwarded to the Rate Analysis Unit of the Commission's Transportation Division. Some of these photocopied documents were received in evidence as Exhibits Nos. 2A, 2B, 3A, 5A, 5B, 7A, and 9A. Exhibit No. 8A is a summary of other shipping documents prepared by the staff representative. Based upon the data contained in the shipping documents and supplemental information supplied by the staff representative certain rate statements were prepared by a Commission staff rate expert and introduced as Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10. Said exhibits reflect purported undercharges in the amount of \$7,415.37.

The main contention of the Commission staff in this proceeding is that respondent has assessed improper rates because it provided transportation in more than one unit of equipment while transporting produce service shipments in contravention of the definition contained in Item 11 of Minimum Rate Tariff No. 8, because it transported split pickup or delivery shipments without having received prior written instructions and because in its use of the produce service shipment provision of Minimum Rate Tariff No. 8 it sometimes transported shipments using a minimum weight of 20,000 pounds instead of the correct minimum weight of 24,000 pounds.

Exhibit No. 9 reflects transportation in which the shipper provided written instruction to transport the shipments as multiple lots or split pickups but the carrier rated as single shipments.

This situation is the reverse of the more common type of error wherein no written instructions are provided.

Respondent offered no defense to the fact of the violations charged, it did, however, bring to light certain facts which are germane to the enforcement of provisions in the Commission tariffs and the assessment of penalties for the violations thereof.

Here it is the uncontroverted testimony of the staff investigator that respondent through its president cooperated fully in supplying records and information to him, that the total of 148 shipments out of some 6,800 were all those in which any violations were found, that the transportation patterns of respondent were rather complex and that aside from the produce service shipments respondent did a good job of compliance. The rate expert testified that he could find no pattern of device for violation of the tariffs and concluded that the reason for the violation stemmed mainly from a lack of understanding of the tariff definition with regard to produce service shipments.

Respondent's president testified that it was the rating policy of respondent to obey all Commission directives, that respondent had never before been involved in any formal or informal undercharge proceedings with the Commission although its operations had been checked several times, that he welcomed such checks because of the information and knowledge respondent derived therefrom and that respondent had modified its operations due to the instant proceeding to the extent that it now demands full documentation from its shippers (causing the loss of some accounts); it no longer utilizes the produce service shipment provision of the tariff, it contemplates the use of a periodic traffic service audit and it has attempted to employ an experienced rating clerk, although it has found it difficult to find one within the Watsonville area.

A staff witness, on cross-examination, testified that to his knowledge there have been four previous investigations dealing with produce service shipments. Two of these resulted in informal undercharge letter directives and two in formal proceedings. This matter is one of the latter two. In the other formal proceeding no punitive fine was imposed. Respondent's counsel urged that none should be imposed here inasmuch as the Commission has to date enunciated no principles with regard to the applicability of that provision, which was first effective February 15, 1964, in the tariff. He pointed out the stigma attached to the imposition of a punitive fine within the shipping and trucking industry and argued that it was not warranted in this case. He agreed to take prompt action to avoid the running of the statute of limitations by collection of the undercharges set forth herein.

It should be clear from this proceeding that in accordance with the provisions of Item 11 of Minimum Rate Tariff No. 8 a produce service shipment must be transported in one unit of equipment in one continuous movement not exceeding 48 hours in duration and any oral shipping instructions must be confirmed by a single shipping document within 48 hours after final delivery. With regard to dividing mixed shipments into two or more separate shipments in accordance with the provisions of Item 100-B of Minimum Rate Tariff No. 8 we hereby enunciate the principle that when the shipper provides written directions for split pickup or split delivery the carrier may not thereafter rate such shipments separately in order to arrive at a lower transportation charge; the shipper's wish must be honored.

Staff counsel recommended that respondent be ordered to collect the undercharges set forth in the exhibits proceeding promptly to avoid the statute of limitations, be fined in the amount

thereof and be ordered to cease and desist from any further violation of the Commission orders. He further recommended on behalf of the Transportation Division that respondent be assessed a punitive fine of \$500.

After consideration the Commission finds that:

1. Respondent operates pursuant to a certificate of public convenience and necessity as a highway common carrier and as a radial highway common carrier and as a highway contract carrier under permits.
2. Respondent was served with appropriate tariffs and the distance table.
3. Respondent charged less than the lawfully prescribed rates in the instances as set forth in Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 resulting in undercharges of \$7,415.37.

Based upon the foregoing findings of fact the Commission concludes that respondent violated Sections 494, 3664 and 3737 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 \$7,415.37.

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 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. Respondent shall pay a fine of \$7,415.37 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. 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 proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; 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.
4. Respondent shall cease and desist from any further violations of the Commission's orders or the Public Utilities Code.

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 19th day of SEPTEMBER, 1967.

[Signature]
President

[Signature]
[Signature]
[Signature]
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.