

ORIGINAL

Decision No. 73231

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of CERTIFIED
FREIGHT LINES, INC., a corporation.

Case No. 8634
(Filed May 23, 1967)

Knapp, Gill, Hibbert & Stevens, by Karl K. Roos,
for respondent.
O. H. Emery, for Union Sugar Co., and A. S.
Fitz-Gerald, in propria persona, interested
parties.
Elmer J. Sjostrom, Counsel, and E. E. Cahoon, 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 rates, operations and practices of Certified Freight Lines, Inc., a corporation.

A public hearing was held before Examiner Mooney on August 17, 1967, at Santa Maria. The matter was submitted on said date.

Respondent operates pursuant to a highway common carrier certificate authorizing it to transport general commodities between the San Francisco Territory, the Los Angeles Metropolitan Area and numerous other points located generally between said territory and area, and also to transport specified commodities between various points.^{1/} In addition, respondent operates pursuant to radial highway common carrier, highway contract carrier and city carrier permits. It has terminals at San Francisco, Oakland, San Jose,

^{1/} Decision No. 62940, dated December 19, 1961, in Application No. 43851, unreported.

Arroyo Grande, Santa Maria, Oxnard and Los Angeles. Respondent has 160 employees and operates 99 power units and 149 trailer units. Its gross operating revenue for the year ending June 30, 1967, was \$2,728,777. Respondent was served with copies of Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions to each. In addition, respondent is a party to Western Motor Tariff Bureau Tariffs Nos. 100 and 111.

On various days during August and September 1966 and January 1967, a representative of the Commission's Field Section visited respondent's main office in Arroyo Grande and also its offices in San Jose and Los Angeles and checked respondent's records covering the transportation of sugar for the month of June 1966 and all other commodities for the period January through June 1966. The witness testified that he reviewed approximately 10,000 shipping documents. He stated that he made true and correct photocopies of certain of respondent's shipping documents and that they are included in Exhibit 1. The witness testified that respondent was very cooperative and furnished him with all information requested.

A rate expert for the Commission staff testified that he had taken the set of documents in Exhibit 1 and formulated Exhibits 2 through 8. He explained that each of the exhibits he prepared relates to transportation performed for a particular shipper. He testified that said exhibits show the rate and charge assessed by respondent, the minimum or tariff rate and charge computed by the staff and the resulting undercharge alleged by the staff for the transportation covered by each part thereof. The following tabulation shows for each of the seven exhibits the number of parts, the party for whom the transportation was performed, the commodities transported, the total amount of undercharges alleged, and, in addition, the total of the undercharges alleged in the seven exhibits:

<u>Exh. No.</u>	<u>No. of Parts</u>	<u>Transportation Performed for</u>	<u>Commodities Transported</u>	<u>Amount of Undercharge</u>
2	2	Amchem Products, Inc.	Weed Killing & Cleaning Compds.	\$ 72.90
3	2	Ford Motor Co.	Tractors, Parts, Lube Oil	62.81
4	2	Kaiser Aluminum & Chemical Corporation	Aluminum Foil	75.97
5	3	Monarch Match Co.	Matches	157.45
6	6	Peroxide & Specialties Co.	Hydrogen Peroxide & Cleaning Compds.	178.15
7	2	Westab, Inc.	Stationery Supplies & Heating Element	29.68
8	46	Union Sugar Co.	Bulk Sugar	<u>2,305.47</u>
			Total	\$ 2,882.43

The rate expert testified that the transportation covered by each part of Exhibits 2 through 7 involved multiple deliveries from a point within respondent's certificated area to points both within and beyond this area. He stated that respondent had rated said transportation as a single split delivery shipment; whereas, the deliveries to points within respondent's certificated area should have been rated as one split delivery shipment under its highway common carrier tariff, and the deliveries to points beyond should have been rated as a separate split delivery shipment under Minimum Rate Tariff No. 2. The witness testified that respondent had interlined some of the deliveries to points outside the area covered by its certificated rights with other common carriers with whom it had not published joint rates or with permitted carriers and that this cannot be done. In addition, he explained that in several instances respondent had rerated a component delivery as a separate shipment from a point along the split delivery route without the

necessary instructions from the shipper as required by the applicable tariff rule, and that the tariff rule specifically prohibits this in the absence of said instructions.

The rate witness testified that the 46 shipments of bulk sugar covered by Exhibit 8 were transported in shipper-owned, hopper-bottom trailers. He pointed out that all of the sugar shipments originated at Betteravia (near Santa Maria); that the transportation covered by Parts 1 through 7 were delivered to destinations in the Los Angeles Metropolitan Area; and that the shipments covered by Parts 8 through 46 were delivered to destinations in Salinas and the San Francisco Territory. He testified that all of said transportation was within respondent's certificated area. In this connection he explained that respondent's certificate (Appendix A to Decision No. 62940, supra) is divided into three main sections which are designated paragraphs A, B and C; that paragraph A authorizes the transportation of general commodities, including bulk sugar in hopper-bottom trailers belonging to the shipper, between numerous points in the State, including transportation between Betteravia, on the one hand, and Salinas and points in the San Francisco Territory, on the other hand; that subparagraphs 6(f) and (i) of paragraph A prohibit the transportation of general commodities in dump, hopper-bottom or special equipment between the Los Angeles Metropolitan Area and other points, including Betteravia, that respondent is authorized to serve as a general commodity carrier; that paragraph B authorizes the transportation of specific commodities between certain points; that restrictions similar to those included in subparagraphs 6(f) and (i) of paragraph A are not included in paragraph B; that although respondent is precluded from transporting sugar in the shipper's hopper-bottom trailers between Betteravia and

the Los Angeles Metropolitan Area under the provisions of paragraph A, subparagraph 4 of paragraph B specifically authorizes said transportation; and that paragraph C authorizes respondent to establish through routes and rates between all points described in paragraphs A and B.

The rate expert testified that commodity rates for the transportation of bulk sugar in shipper-owned, trailer equipment are published in Item 4785 of WMTB Tariff No. 111; that a footnote in said item provides that the rates therein do not apply via the lines of certain named carriers participating in the tariff, including respondent; and that for this reason it was necessary to apply the higher class rates to the sugar shipments in Exhibit 8. The rates in Item 4785 are identical to the commodity rates for the transportation of bulk sugar in shipper's trailers named in Item 745 of MRT No. 2. The rate expert stated that he had checked several of the shipments in Exhibit 8 and found that respondent had assessed the sugar commodity rate but that he did not make this comparison for all of the shipments because the commodity rates were not applicable.

The president of respondent during the period January 1963 (when respondent commenced operations) through June 1967 testified as follows: He operated Fitz-Gerald Trucking from 1939 until it merged with Arroyo Grande Trucking in 1962 and became respondent corporation; he commenced hauling sugar in sacks for Union Sugar in 1947; commencing in 1950, the method of shipment was changed to bulk in shipper-owned trailers; he had always considered the sugar movement to be a contract haul under respondent's permit authority and subject to the sugar commodity rates in MRT No. 2; the revenue from the Union Sugar account was reported to the Commission as revenue earned under its permit authority; he was never aware that respondent

had been flagged out of the sugar commodity rates in Item 4785 of WMTB Tariff No. 111 and had no knowledge as to why the tariff publishing agent had done this; had he been aware of any problems with the sugar shipments, he could have corrected them with the proper tariff filing; he has not been with respondent and has had no managerial control over it since June 1967; he is presently divesting himself of his financial interest in respondent; he now has his own permit and is handling all of Union Sugar's transportation.

The president of respondent since June 1967 testified as follows: From the date respondent was organized until June 1967, he was vice president; respondent lost \$30,000 in 1966; he had to invest personal capital in respondent because of this; respondent lost money during the first two months of 1967; while business has not been too bad this year, the cost of doing business is exceedingly high; he was of the opinion that the restriction in respondent's certificate prohibiting the transportation of commodities in bulk in dump truck equipment (subparagraph 6(f) and (1) of paragraph A) applied to all transportation respondent is authorized to perform by said certificate; he was not aware of the exception in Item 4785 of WMTB Tariff No. 111; he had erroneously thought respondent was a participating carrier in Valley's tariff for joint rates; all of the rating errors herein were unintentional and steps either have been or are being taken to correct them; if the Commission orders the collection of any of the undercharges found herein, respondent would undoubtedly lose the accounts it has with the shippers involved; this would have a serious, detrimental effect on respondent's certificated operations and would most likely necessitate closing its San Jose terminal.

Counsel for the Commission staff recommended that respondent be fined in the amount of the undercharges found herein and that, in addition, a punitive fine of \$500 be assessed against respondent. Respondent's counsel argued that the rate errors, if any, that the Commission might find herein were extremely technical in nature; that there was no intent to charge improper rates; and that the facts and circumstances do not warrant any fine.

Discussion

We agree with the staff rating shown in Exhibits 2 through 7. Each part of the aforementioned exhibits involve mixed certificated and permitted operations. "Where a carrier holds operating authority under both the Public Utilities Act and the Highway Carriers' Act, and receives property for shipment, a portion of which has point of . . . destination not within the area covered by his common carrier certificate . . . , the property transported may not be rated as a single shipment under the split . . . delivery provisions of his tariff, but each portion thereof must be rated separately under the applicable provisions of his filed tariff and the applicable minimum rate tariff."^{2/} Furthermore, a carrier may not interline component deliveries of split delivery shipments destined to points beyond its certificated area with other certificated carriers authorized to serve the beyond area unless and until joint rates covering said movements have been published and filed with the Commission. The record establishes that the required joint rates had not been published and filed at the time the transportation in issue moved. Likewise, a certificated carrier may not interline such component deliveries with a permitted carrier.

^{2/} Decision No. 61265, dated December 28, 1960, in Case No. 6186, 58 Cal. P.U.C. 407 (1960).

With respect to the several instances in which respondent had rerated a component delivery of a split delivery shipment as a separate shipment from a point along the split delivery route, the split delivery rules in WMTB Tariff No. 111 and MRT No. 2 both provide that the shipper must furnish the carrier with written instructions requesting this. In each instance the required written instructions were not furnished. In the circumstances, the rerating provisions could not be applied.

We do not agree with respondent that the transportation of bulk sugar in shipper-owned hopper-bottom trailers covered by Exhibit 8 was performed under respondent's permit authority. The staff has correctly pointed out that this transportation was covered by the certificate granted respondent by Decision No. 62940, supra. We concur with the staff rating of said transportation.

The record establishes that respondent had applied the commodity rates named in Item 745 of MRT No. 2 for bulk sugar in trailer equipment furnished by the shipper to the Exhibit 8 transportation. The identical rates are published in Item 4785 of WMTB Tariff No. 111. Although respondent was not a party to the rates in Item 4785, it could have been. The witnesses for respondent stated that they had no knowledge as to why the tariff publishing agent had excepted respondent from this item and that steps would be taken to correct this. It is noted that the minimum commodity rates on sugar in Item 745 of MRT No. 2, which were in effect when the transportation in issue moved, were found by the Commission to be reasonable minimum rates for said transportation.^{3/} There is no

^{3/} Decision No. 69330 in Case No. 5432 (Pet. Mod. 377) and Application No. 47563, 64 Cal. P.U.C. 443 (1965).

evidence herein that Union Sugar, the party responsible for the freight charges, was knowledgeable of any problems regarding the assessed rates.

Based on a review of all the facts and circumstances surrounding the sugar shipments in Exhibit 8, it is obvious that the failure by respondent to participate in the sugar commodity rates in Item 4785 was an inadvertent error due to a misunderstanding of its certificated operating rights both by itself and its tariff publishing agent.

We do not agree with respondent that the record does not support the imposition of any fine. Undercharges on numerous shipments have been established. This will not be tolerated irrespective of the reasons therefor.

We will include the total amount of the undercharges found herein in Exhibits 2 through 7, which total \$576.96, in the fine assessed pursuant to Sections 2100 and 3800 of the Public Utilities Code. The undercharges found herein in Exhibit 8 will not be included in said fine. In addition, a punitive fine in the amount of \$400 will be assessed pursuant to Sections 1070 and 3774 of the Code. The total amount of fine is \$976.96.

Findings and Conclusions

The Commission finds that:

1. Respondent operates pursuant to a highway common carrier certificate and radial highway common carrier, highway contract carrier and city carrier permits.
2. Respondent was a party to all highway common carrier tariffs involved in this proceeding (Western Motor Tariff Bureau Tariffs Nos. 100 and 111) and was served with Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions to each.

3. With respect to the transportation covered by Exhibits 2 through 7, the freight delivered to points within respondent's certificated area may not be combined with freight delivered to points beyond said area and rated as a single split delivery shipment under respondent's common carrier authority. The freight delivered to each area must be rated separately under the applicable provisions of respondent's filed tariff and the applicable minimum rate tariff. The component deliveries to points beyond respondent's certificated area may not be interlined with other common carriers with whom respondent does not have joint rates published and on file with the Commission or with permitted carriers.

4. A component delivery of a split delivery shipment may not be rerated as a separate shipment from a point along the split delivery route unless written instructions requesting this have been furnished to the carrier by the shipper as required by the applicable split delivery rule in the governing tariff.

5. The shipments in Exhibit 8 of bulk sugar in trailers furnished by the shipper were transported by respondent as a certificated carrier. Said transportation is covered by the certificate of public convenience and necessity granted to respondent by Decision No. 62940, supra.

6. Respondent was not a party to the sugar commodity rates in Item 4785 of WMTB Tariff No. 111 at the time the transportation covered by Exhibit 8 moved. This was due to a misunderstanding by both respondent and its tariff publishing agent that said transportation was not within the scope of respondent's certificated operating rights. Steps are being taken to correct this.

7. The staff rating of the transportation covered by Exhibits 2 through 8 is correct.

8. Respondent charged less than the lawfully prescribed rates named in WMTB Tariff No. 111 and MRT No. 2 in the instances set forth in Exhibits 2 through 7 resulting in undercharges in the total amount of \$576.96.

9. Respondent charged less than the lawfully prescribed rates in WMTB Tariff No. 111 in the instances set forth in Exhibit 8 resulting in undercharges in the total amount of \$2,305.47, but the addition of this amount to the amount already assessed and collected would be an unreasonable and excessive charge on the sugar shipments in Exhibit 8.

Based upon the foregoing findings of fact, the Commission concludes that:

1. Respondent violated Sections 494 and 3667 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 \$576.96, and in addition thereto respondent should pay a fine pursuant to Sections 1070 and 3774 of the Public Utilities Code in the amount of \$400.

2. Charges on the sugar shipments in excess of those accruing under the sugar commodity rates should be waived.

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 have not been diligent or have not taken all reasonable measures to collect all undercharges or have 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 \$976.96 to this Commission on or before the fortieth 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, except the charges on the sugar shipments found to be excessive and unreasonable, and shall notify the Commission in writing upon the consummation of such collections. The excessive charges are hereby authorized and directed to be waived.

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 by it and specifying the action taken by it to collect such undercharges, and the results of such action, until such undercharges have been collected in full or until further order of the Commission.

4. Respondent shall, in connection with its permit operations, 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.

5. Respondent shall, in connection with its highway common carrier operations, cease and desist from charging and collecting compensation for the transportation of property or for any service

in connection therewith in a different amount than the applicable tariff rates and charges.

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 24th day of OCTOBER, 1967.

[Signature]
President
[Signature]
[Signature]
[Signature]
[Signature]
Commissioners