

ORIGINAL

Decision No. 73476

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the rates, opera-
tions, and practices of WESTERN
DUMP TRUCK SERVICE, a corporation.

Case No. 8585
(Filed January 24, 1967)

Dooley & Dooley, by David M.
Dooley, for Western Dump
Truck Service, respondent.
Berol, Loughran & Geernaert,
by Bruce R. Geernaert and
Marshall G. Berol, for Miles
and Sons Construction Division,
interested party.
Timothy E. Treacy, Counsel, for the
Commission staff.

INTERIM OPINION

On January 24, 1967, the Commission instituted an investigation on its own motion into the rates, operations, and practices of Western Dump Truck Service (Western). Said investigation was for the purpose of determining whether respondent violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code by charging less than the applicable hourly minimum rates on transportation in accordance with Items 300, 365, and 366 of Minimum Rate Tariff No. 7 (MRT 7) and supplements thereto, and also whether respondent violated Sections 3704 and 3737 of the Public Utilities Code by failing to properly complete, execute, and retain shipping documents as required by Item 93.1 of MRT 7.^{1/} The order of investigation covered the period between April and July 1966.

^{1/} The staff, during the hearings, stated that they did not intend to proceed on any documentation error violations, so that part of this case will be dismissed.

This case is a companion case to Case No. 8584, Investigation of O. D. Hansen, Jr., and Fred ReCupido, doing business as O L Trucking, Interim Order issued this day, Decision No. 73475, to Case No. 8583, Investigation of Fratiano Trucking Co., Inc., Interim Order issued this day, Decision No. 73477, and to Case No. 8586, Investigation of Wm. E. Scarpo, doing business as D & D Trucking Co., Interim Order issue this day, Decision No. 73477

Public hearings were held before Examiner Robert Barnett in El Centro on March 1, 2, and 3, 1967, and in San Francisco on April 24, 1967 and September 18, 1967, after which the matter was submitted. Miles and Sons Construction Division (Miles) was permitted to appear as an interested party.

Pursuant to Contract No. 11-038024 between the State of California Division of Highways and Miles, Miles agreed to construct a portion of Interstate Highway No. 8 near El Centro. This case is concerned with some of the work performed between April 1966 and July 1966, which involved the transportation of dirt fill from dirt pits to the construction site. To perform this transportation Miles hired permitted carriers. Some of these carriers, in turn, engaged other permitted carriers to assist in this transportation, thus creating a prime carrier-subhauler relationship. Western was a prime carrier.

Minimum Rate Tariff No. 7 provides rates to be charged for the transportation of dirt in the El Centro area, which charges are stated either as hourly rates or as distance rates depending on the agreement of the parties. The hourly rate varies in relation

to the carrying capacity of the truck.

Contract No. 11-03804 provides, in part, that "trucks used to haul material being paid for by weight shall be weighed empty daily" As between the Division of Highways and Miles the dirt hauled under this contract was paid for by weight. Scales and a scale house were placed near the job site so that the trucks could be weighed. As between Miles and Western the dirt hauled was paid for according to hourly rates.

STAFF EVIDENCE

Associate Transportation Representative Switzer testified that he is in charge of the El Centro district office of the Commission. On May 23, 1966 some 40 truck drivers appeared at his office and complained that they were being paid less than the rates prescribed in MRT 7 for work on the Interstate Highway No. 8 job. As a result of this complaint the Commission staff set up a field survey which took place on May 25, 26, and 27, 1966 at the job site. Three assistant transportation representatives were each assigned to ride a specific truck for each of the three days. They were instructed to observe the operation and record the time factors required by Item 93.1 of MRT 7. Mr. Switzer stationed himself at the job site scale house where he recorded the time that each truck weighed in light in the morning (tare weight) and where he could see the trucks coming over the scale to weigh each load throughout the day. A State weighmaster recorded the tare weight of each truck and the loaded weight of each truck as it came across the scales.

The scale house was located about 1/8 to 1/4 of a mile from the job site. The pit where the trucks were loaded with dirt was located 8.28 miles from the scale house, via the route through the community of Heber, or 10.83 miles through Calexico. The running time on each route was approximately the same because traffic conditions through Calexico permitted faster movement. Mr. Switzer's records show that the usual running time from the pit to the job site and return was between 38 and 43 minutes.

Mr. Switzer determined the chargeable time that Western Truck No. 1024 worked on May 25, 1966 by observing the time that the truck weighed light in the morning, and the time that the truck arrived to dump the last load in the afternoon, and by estimating the other time factors needed to determine the chargeable time.^{2/} The estimate was based on average times of all other trucks running those days, including those upon which staff representatives rode.

Mr. Switzer determined that the time the driver reported for work was the time the driver obtained his tare weight in the morning. This determination was based on the observation that an employee of Miles would come into the scale house each afternoon and give instructions as to when the scale should open the next morning. Another employee would then write the time down on a piece of cardboard and put the cardboard outside by the scale so that the drivers could see the sign as they drove up to weigh their last load of the day.

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The time factors needed to obtain the net chargeable time are:

1. Time driver reported to work.
2. Time completed last loading.
3. Time arrived to dump last load.
4. Time finished last dump.
5. Allowable deductions.

On August 10, 1966 Mr. Switzer visited the office of Western to examine its records for the month of May 1966. He determined that Western conducted operations on the Interstate Highway No. 8 job between April 1, 1966 and July 30, 1966. He photocopied the three freight bills of Western which reflected the activity of the trucks that staff representatives observed during the May survey. These photocopies, and the information gathered by the staff representatives who observed the trucks, were sent to a staff rate expert to determine the nature and extent of tariff violations, if any.

Assistant Transportation Representative Smith testified that on May 26, 1966 he participated in the investigation of the construction of Interstate Highway No. 8 near El Centro by riding a truck and recording its operation in order to compute the transportation charges in accordance with MRT 7. He rode Western's Truck No. 1008. His record of some of the time notations required by MRT 7 is:

Time reported for work	0541 AM
Time completed last loading	1615 PM
Time arrived to dump last load	1637 PM
Time finished last dump	1641 PM
Allowable deductions	27 minutes

He testified that the truck made 15 round trips on May 26, 1966 and the average time for each round trip was 41 minutes. After obtaining tare weight, it took approximately 15 minutes to drive from the scale house to the loading pit, and about another 20-minute wait before the truck was first loaded.

Mr. Smith testified that on May 27, 1966 he rode Western's Truck No. 1027. His record of some of the time notations required by MRT 7 is:

Time reported for work	0520 AM
Time completed last loading	1550 PM
Time arrived to dump last load	1618 PM
Time finished last dump	1619 PM
Allowable deductions	30 minutes

He testified that the truck made 15 round trips on May 27, 1966 and the average time for each round trip was 40 minutes. After obtaining tare weight, it took approximately 15 minutes to drive from the scale house to the loading pit and another 30-minute wait before the truck was first loaded.

Associate Transportation Rate Expert Peterson testified that he prepared Exhibit No. 4 which shows the rates and charges assessed by Western and compares them to the rates and charges that the witness considers are the applicable minimum rates and charges for the transportation that took place. He prepared his exhibit using information supplied by Witness Switzer and from the staff personnel who rode Western's trucks. A summary of Exhibit No. 4 shows:

<u>FREIGHT BILL NO. A85292</u>	<u>HOURS</u>	<u>CHARGE</u>
Staff Evidence	11 22/60	\$ 165.21
Western's records	10	\$ 140.00
	Undercharge	\$ 25.21
<u>FREIGHT BILL NO. A85051</u>	<u>HOURS</u>	<u>CHARGE</u>
Staff Evidence	10 55/60	\$ 157.79
Western's records	10 1/2	\$ 147.00
	Undercharge	\$ 10.79
<u>FREIGHT BILL NO. A85341</u>	<u>HOURS</u>	<u>CHARGE</u>
Staff Evidence	10 54/60	\$ 157.51
Western's records	10	\$ 140.00
	Undercharge	\$ 17.51

Mr. Peterson determined the time and location the driver reported for work from information given to him by Mr. Switzer. The information was that Miles ordered the carriers to weigh light each morning. This time of weighing light was, in Mr. Peterson's opinion, the time of reporting to work.

Western's Evidence

Western presented one witness, its chief officer, Mr. G. C. Lindly. He testified that in March, 1966 Mr. Mason, of Miles, called him at his office in Mountain View and asked him to furnish trucks for the El Centro job. The pay was to be \$14.50 an hour, which was more than the prevailing minimum rate of \$13.70 an hour, and was supposed to be high enough to provide for any overtime. Western owned no power units but had four trailer units. Mr. Lindly agreed to Miles' offer and began recruiting drivers with tractors and trailers to go to El Centro. All dump truck activity of Western is done through subhaulers. At the start, in April, Western had six or eight subhaulers on the job, and at the peak, approximately fifteen. Mr. Lindly was rarely at the job site, and therefore instructed his subhaulers to take their instructions from Mr. Mason. The method of payment was that the subhauler would fill out his freight bill, submit it to Miles for approval, and then send it to Western. Western, in turn, would bill Miles for the net chargeable time shown, at the agreed rate. Shortly after Western's equipment was on the job Mr. Lindly was informed that Miles would only pay \$14 an hour. Mr. Lindly called Mr. Mason about this "and a lot of conversation transpired with the end result of that being, well, that's the rate, \$14 an hour and that's it." Soon

after this conversation took place Mr. Lindly began billing for overtime, but Miles did not pay any overtime that was not covered by the \$14 an hour rate. Mr. Lindly testified that he never told his subhaulers to falsify documents or make them out incorrectly, nor did he know of any conversion tables being used to alter the hourly rates. Western was on the job through August 1966.

Mr. Lindly testified at length concerning the cubic capacity of his trailers but, as the staff has agreed not to dispute the 19/20 cubic yard capacity claimed by Western, that testimony will not be set forth herein.

Miles' Evidence

Miles did not present evidence during these hearings because, in order to save duplication of testimony, and at Miles' request, it was agreed that any evidence Miles wished to present bearing on the issues raised in the four rate violation proceedings, Case Nos. 8583, 8584, 8585, and 8586, could be submitted in Case No. 8584 and would be considered as Miles' evidence in all four cases. The evidence presented by Miles is set forth in Case No. 8584 and will not be repeated herein. We have considered that evidence to the extent that it is applicable to Western in reaching our decision herein.

Discussion

The central question to be decided in this case, as in the companion cases; is, Where did the truck drivers report to work? For the reasons stated in Case No. 8584, Decision No. 73475, Interim Order issued this day, we find that the drivers reported

for work at the scale house when they weighed light in the morning and, therefore, the time they reported for work was the time they weighed light each morning.

The staff witnesses' testimony regarding the remaining time factors which are needed to determine the chargeable time for the trucks under observation is the most accurate in the record and we find the testimony to be true. Based on our finding that the time the drivers reported to work was the time they weighed light each morning, plus the testimony of the staff witnesses who observed and rode the trucks, and the analysis of the rate expert, we find that Western charged less than the rates prescribed in MRT 7 for work performed on May 25, 26, and 27, 1966 on the El Centro job.

Findings of Fact

1. Pursuant to Contract No. 11-038024 between the State of California Division of Highways and Miles, Miles agreed to construct a portion of Interstate Highway No. 8 near El Centro. One part of said contract provides that "trucks used to haul material being paid for by weight shall be weighed empty daily." Dirt hauled under this contract was paid for by weight.

2. To haul dirt required in the construction of Interstate Highway No. 8 Miles employed, among others, Western. Western, in turn, employed subhaulers. As between Miles and Western, between April 1966 and August 1966 the dirt hauled was paid for according to hourly rates. Respondent operates pursuant to radial highway common carrier and city carrier permits and was served with the appropriate tariff.

3. In response to complaints, members of the Transportation Division of the Commission staff made a field survey of the dirt hauling being performed on the job. The field survey took place on May 25, 26, and 27, 1966 and consisted of staff men observing or riding a truck of Western's and recording the time factors required by Item 93.1 of MRT 7, and one staff man stationed at the scale house on the job recording the time that each truck weighed light in the morning. A State weighmaster at the scale house recorded the tare weight of each truck every morning, and the loaded weight of each truck as it came across the scales during the day.

4. An employee of Miles would come into the scale house each afternoon and give instructions as to when the scale should open the next morning. Another employee would then write the time down on a piece of cardboard and put the cardboard outside by the scale so that the drivers could see the sign as they drove up to weigh their last load of the day. The time the drivers reported for work was the time that they weighed light at the scale house each morning.

5. The staff testimony regarding the time factors needed to determine chargeable time is correct. We find that Western charged less than the rates prescribed in MRT 7 for work described in Freight Bills Nos. A85292, A85051, and A85341 in the total amount of \$53.51.

Conclusion of Law

The Commission concludes that Western violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code by charging less than the applicable hourly minimum rates for transportation in accordance with MRT 7.

C. 8585 - BR/LM *

INTERIM ORDER

IT IS ORDERED that:

1. Western Dump Truck Service, a corporation, shall pay a fine of \$5,000 to this Commission on or before the twentieth day after the effective date of this order. ✓

2. The Commission staff is directed to review Western's records to ascertain all undercharges that have occurred between April 1, 1966 and August 31, 1966 for work done by Western for Miles and Sons Construction Division on the El Centro Interstate Highway No. 8 job, in addition to those set forth herein. When undercharges have been ascertained, this proceeding shall be reopened to take additional evidence to determine the extent of the undercharges found, if any. All parties in this proceeding shall be permitted to participate in the reopened proceeding.

3. The Commission staff shall use the following methods and time factors in determining additional undercharges:

a) On all freight bills, except on those freight bills which have the words "scales" or "pit scales" inserted in a space provided to show the location at which the driver reported for work, the time for reporting for work shall be computed by adding fifteen minutes to the starting time shown to allow for the driving time from the scales to the pit. To the extent that there are other time factors on the freight bill those time factors shall be used, except that net time for computation of charges shown on the freight bill shall be disregarded in all cases.

b) Average times shall be utilized to the extent that accurate time factors cannot be determined from the face of the freight bill. The average time of a round trip was forty minutes, twenty minutes was the average running time of the last load and, therefore, forty minutes was double the running time of the last

load. One-half hour is reasonable for allowable deductions; the difference between time arrived to dump last load and time finished last dump is de minimis, and shall be disregarded.

c) If chargeable time cannot be determined from the time factors on the face of the freight bill plus utilizing the average times set forth above then the following method of computation shall be used: the number of round trips each truck made each day shall be determined from the weighmaster's time sheets; forty minutes shall be allowed for each round trip; fifteen minutes shall be added to allow for the time between reporting to work and obtaining the first load; and twenty minutes shall be added to allow for double the running time of the last load.

d) Cubic capacity of the trailers shall be that shown on the freight bills. If cubic capacity is not shown then a capacity of 19/20 cubic yards shall be used.

4. Western shall file, prior to January 12, 1968, a legal action to collect the amounts of undercharges set forth in Findings of Fact No. 5, together with those that may be found after the examination and hearing required by paragraph 3 of this order, and shall notify the Commission in writing upon the filing of such action.


5. Within sixty days after the effective date of this order, Western shall review its records from April 1, 1966 to and including August 31, 1966 and shall file with the Commission a report setting forth the names of the subhaulers used on the Interstate Highway No. 8 job during this period, the amount originally paid to each, and any amount subsequently paid to each. Western shall remit to each of the subhaulers additional amounts collected in accordance with further order of the Commission.

6. Western 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.

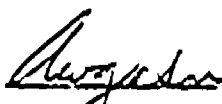
7. That part of the Order of Investigation alleging violations of Item 93.1 of Minimum Rate Tariff No. 7 is dismissed.

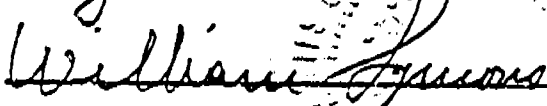
The Secretary of the Commission is directed to cause personal service of this order to be made upon Western. The effective date of paragraph 1 of this order shall be twenty days after the completion of such service; the effective date of the remainder of this order shall be the date hereof. The Secretary is directed to cause service by mail of this order upon all carriers known to the Secretary to have worked for respondent on the Interstate Highway No. 8 construction job at El Centro between April and August, 1966.

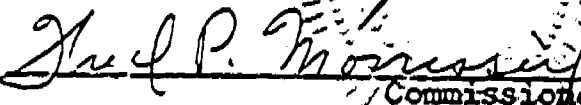
Dated at San Francisco, California, this 12th
day of DECEMBER, 1967.



President







Commissioners

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