

ORIGINAL

Decision No. 73606

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Kilsby Tubesupply, Division of
Pike Corporation of America,

Complainant,

vs.

Signal Trucking Service, Ltd.,

Defendant.

Case No. 8661
(Filed August 2, 1967)

Don Hollar, for complainant.
Wilbur L. DeVilbiss, for
defendant.

O P I N I O N

Complainant requests an order for relief from the rates and charges in Minimum Rate Tariff No. 15 in the amount of \$828.00.

A public hearing was held before Examiner O'Leary at San Francisco on November 20, 1967, on which date the matter was submitted.

Complainant's warehouse manager testified that complainant has a contract with the defendant whereby defendant furnishes a gasoline powered 2-axle tractor and a 27-foot flat-bed semitrailer with driver at a rate of \$1,192 per month. The contract is for a period of one year commencing January 1, 1967. During the period June 12, 1967 through June 30, 1967, which included 15 of the 22 working days in June, the union operating in complainant's warehouse was on strike and therefore complainant had no use for the equipment furnished by defendant. The witness also testified that during the period of the strike the equipment was parked on the premises of the

complainant. The complainant advised defendant of the strike so that defendant might utilize the equipment elsewhere during the strike. The driver of the equipment left the employ of defendant on the last working day prior to the strike for reasons other than the strike.

A representative of defendant testified that there is no provision in Minimum Rate Tariff No. 15 whereby a carrier can remit a portion of the charges due because of a work stoppage. The witness also testified that he did not believe that the strike was a prolonged strike within the meaning of that term as used in the Commission's Transportation Division Informal Ruling No. 101. The witness further testified that flat-bed trailers are not suitable for defendant's general operations in the Bay Area. During the period of the strike defendant did not incur the expense of a driver, but did incur various fixed costs on its equipment such as interest on its investment, insurance and depreciation.

Discussion

Minimum Rate Tariff No. 15 names vehicle unit rates on a yearly, monthly and weekly basis. The rates apply only when the shipper enters into a written agreement with the carrier. The tariff makes no provision for waiver or remission of all or part of the charges when service is interrupted. The Commission has previously declined to amend Minimum Rate Tariff No. 15 to include such a provision; however, it has held that where an inequitable situation may result from interruption or termination of a written agreement beyond the control of the parties, relief may be sought through the filing of formal pleadings appropriate to the circumstances.^{1/}

^{1/} Petition of Cal. Manufacturers Assn. for modification of rule in MRT No. 15, Decision No. 67659 in Case No. 7783 (Unreported).

In addition to the yearly vehicle unit rates, Minimum Rate Tariff No. 15 also provides monthly and weekly vehicle unit rates. The monthly vehicle unit rate for the type of equipment involved herein during the period in question was \$1,297 per month. Assuming there will be no additional work stoppages during the remainder of the year the annual cost to the shipper based on the monthly rate would be \$14,521 ($11\frac{1}{3} \times 1297$) as opposed to \$14,304 (1192×12) under the yearly vehicle unit rate for the entire year. This is not the type of inequitable situation envisioned by Decision No. 67659 in Case No. 7783.

After consideration the Commission finds that:

1. The defendant furnished a tractor and trailer with driver to complainant at a base rate of \$1,192 per month for a period of one year.
2. The complainant's warehouse was closed because of a strike during 15 of the 22 working days in June 1967.
3. Complainant was not able to utilize the tractor, trailer and driver furnished by defendant during the period of the strike.
4. The annual cost to complainant is less under the yearly vehicle unit rate computed for the entire year than under the monthly vehicle unit rate computed for the period of time during the year ($11\frac{1}{3}$ months) that complainant utilizes the equipment and driver furnished by defendant.

The Commission concludes that the complaint should be dismissed.

O R D E R

IT IS ORDERED that Case No. 8661 is dismissed.

The Secretary is directed to cause service of this order to be made upon complainant and defendant. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 9th day of JANUARY, 1968.

Robert E. Mitchell
President
William W. Bennett
Augusta
William J. Lyons, Jr.
Sped. P. W. Mussey
Commissioners