

JR

ORIGINAL

Decision No. 73647

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the rates, operations
and practices of NORTHERN CALIFORNIA
TRUCKING COMPANY, a corporation.

Case No. 8677
(Filed August 22, 1967)

Herbert Salzer, for respondent.
Elmer Sjostrom, Counsel, and E. H. Hjelt,
for the Commission staff.

O P I N I O N

This proceeding is an investigation on the Commission's own motion into the rates, operations and practices of Northern California Trucking Company, a corporation.

Public hearing was held before Examiner Mooney in San Francisco on November 7 and 30, 1967, on which latter date the matter was submitted.

At the outset of the initial hearing, the vice-president of respondent stated that respondent's counsel could not be present and requested an adjournment to November 30, 1967, which was granted. No evidence was received at the initial hearing. By letter dated November 27, 1967, counsel for respondent advised the Commission that he had received notice of the continued hearing date; that respondent ceased business operations on October 7, 1967, is presently attempting to settle claims of all creditors and will be dissolved as soon as its financial difficulties are resolved; and that respondent does not wish to contest the matter before the Commission and will not appear at the adjourned hearing. Evidence was presented by the Commission staff only.

Respondent holds Radial Highway Common Carrier Permit No. 43-6164 and City Carrier Permit No. 43-6165. Both permits contain the following restriction:

"Whenever permittee engages other carriers for the transportation of property of the Northern California Trucking Company...permittee shall not pay such carriers less than 100% of the applicable minimum rates"

Respondent has a terminal at Mountain View, California. As of the end of 1966, it had eight dump trucks and transfer trailers and 19 sets of semi- and full-dump trailers and employed eight drivers, a dispatcher, three office employees and two mechanics. Respondent's gross operating revenue for the year ended June 30, 1967, was \$1,155,376. It was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory 1, together with all supplements and additions to each.

A representative of the Commission's Field Section visited respondent's place of business and checked its records for the period October 1966 through February 1967. The representative testified that he reviewed hundreds of shipping documents; that because of missing information on most of the documents, he was unable to determine whether the charges shown thereon were no lower than the applicable minimum charges for the transportation covered by said documents; that over two-thirds of the transportation was performed by other carriers for respondent; that said other carriers furnished tractors only and pulled respondent's trailer equipment; and that respondent deducted a trailer rental of 25.5 percent, a service charge of five percent and a charge for gross revenue taxes from the amounts paid said other carriers. The witness stated that much of the material transported by other carriers as purported subhaulers was in fact material owned by respondent; that in such instances

the purported subhaulers were prime carriers; and that the restriction in respondent's permits requires it to pay such carriers 100 percent of the applicable minimum rates.

The representative testified that he obtained copies of shipping documents and statements covering the transportation of sand and soil owned by respondent from six carriers who were engaged by respondent to perform said transportation for it as purported subhaulers. In addition, he stated that he obtained from two of the same carriers and three additional carriers copies of shipping documents and statements covering subhaul transportation of dirt and fill by said carriers for respondent. The dirt and fill, he explained, were not the property of respondent. The witness testified that all of said documents are in Exhibit 1.

A staff rate expert testified that he took the set of documents in Exhibit 1, together with the supplemental information testified to by the representative, and formulated Exhibits 2 through 8 which show the amount of underpayment to other carriers engaged as subhaulers by respondent to transport its own property (Exhibits 2 through 7) and undercharges and underpayment to subhaulers in connection with for-hire transportation of property not owned by respondent (Exhibit 8). The witness explained that the underpayments to the purported subhaulers resulted from the application of incorrect tariff charges and the deduction of the five percent service charge or commission in violation of the restriction in respondent's permits. With respect to the for-hire transportation, the witness stated that the undercharges resulted from assessing a flat charge per load rather than the applicable tariff charge, and the underpayment to subhaulers resulted from paying them less than 95 percent of the applicable minimum rates, excluding authorized

deductions, as required by Item 94 of Minimum Rate Tariff No. 7. The total of the underpayments to subhaulers shown in Exhibits 2 through 8 is \$2,353.53 and the total of the undercharges shown in Exhibit 8 is \$538.55.

The officers of respondent are as follows: Herman Hoyt Young, president; Herbert Salzer, vice-president; and Gerda Salzer, secretary-treasurer (Exhibit 9).

The Commission finds that:

1. Respondent holds Radial Highway Common Carrier Permit No. 43-6164 and City Carrier Permit No. 43-6165. Both permits include restrictions prohibiting respondent from paying less than 100 percent of the applicable minimum rates to other carriers engaged by it to transport property owned by it.
2. Respondent was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory 1, together with all supplements and additions to each.
3. Respondent engaged other carriers as purported subhaulers to transport property owned by it in the instances set forth in Exhibits 2 through 7. Said purported subhaulers were in fact prime carriers when they transported respondent's property and should have been paid 100 percent of the applicable minimum rates therefor.
4. Respondent charged less than the applicable minimum rates for the for-hire transportation summarized in Exhibit 8 and paid the subhaulers engaged by it to perform said transportation less than 95 percent of the applicable minimum rates, excluding authorized deductions, as required by Item 94 of Minimum Rate Tariff No. 7.
5. Respondent underpaid other carriers in the instances set forth in Exhibits 2 through 7 and subhaulers in the instances set

forth in Exhibit 8 in the total amount of \$2,353.53. The carriers to whom underpayments were made and the amounts thereof are as follows:

<u>Exhibit No.</u>	<u>Carrier</u>	<u>Amount of Underpayment</u>
2	Charles P. Andregg	\$ 407.68
3	Rodger Burris	416.27
4	Rod C. Harnisch	392.56
5	Jack Lage	150.68
6	Del M. Stangl	288.85
7	Varner Trucking	333.38
8	(Kenneth L. Bunyard	70.35
	(Rodger Burris	97.19
	(Howard Lyman	63.29
	(Ken Dottl, dba KNK Trkg.	71.90
	(Jack Lage	<u>61.38</u>
	Total of Underpayments	\$2,353.53

6. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 8, resulting in undercharges in the amount of \$538.55.

7. The officers of respondent corporation are as follows: Herman Hoyt Young, president; Herbert Salzer, vice-president; and Gerda Salzer, secretary-treasurer.

The Commission concludes that:

1. Respondent violated Sections 3667 and 3737 of the Public Utilities Code.
2. Respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$5,000 on or before twenty days after the effective date of the order which follows.
3. In the event the fine referred to in conclusion 2 is not paid within twenty days after the effective date of the order which follows, the permits held by respondent should, without further order of the Commission, be revoked and no new permit should be issued to respondent or to Herman Hoyt Young, Herbert Salzer or Gerda Salzer,

or to any partnership or association in which any of said persons are financially interested, or to any corporation in which any of said persons are interested to the extent of five percent or more of the total value of the outstanding stock therein, unless or until respondent or said persons or any of them shall have paid said fine and complied in full with all other requirements in the order which follows.

The Commission expects that respondent will promptly pay to the other carriers engaged to transport property owned by it the amounts of underpayments shown in Exhibits 2 through 7; that respondent will promptly pay to the subhaulers the amounts of underpayments shown in Exhibit 8; and that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges shown in Exhibit 8.

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of \$5,000 to this Commission on or before the twentieth day after the effective date of this order.
2. Respondent shall pay the underpayments set forth herein to the furnishers of transportation engaged by it to transport property owned by it (Exhibits 2 through 7) and to the subhaulers (Exhibit 8) and shall notify the Commission in writing when said payments have been made in full.
3. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein (Exhibit 8) and shall notify the Commission in writing upon the consummation of such collections.

4. Respondent shall promptly pay the underpayments and shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and in the event underpayments ordered to be paid by paragraph 2 or undercharges ordered to be collected by paragraph 3 of this order, or any part of such underpayments or undercharges, remain unpaid or 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 underpayments remaining to be paid and the undercharges remaining to be collected and specifying the action taken to pay such underpayments and to collect such undercharges, and the result of such action, until such underpayments have been paid in full and such undercharges have been collected in full or until further order of the Commission.

5. Respondent shall cease and desist from violating the restriction in its permits prohibiting respondent from paying less than 100 percent of the applicable minimum rates to other carriers engaged by it to transport property owned by it.

6. Respondent shall cease and desist from violating any rules established by the Commission and 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. In the event that the fine referred to in paragraph 1 is not paid within twenty days after the effective date of this order, Radial Highway Common Carrier Permit No. 43-6164 and City Carrier Permit No. 43-6165 shall be revoked without further order of the Commission, and no new permit shall be issued to respondent or to Herman Hoyt Young, Herbert Salzer or Gerda Salzer, as individuals,

or to any partnership or association in which any of said named persons are financially interested, or to any corporation in which any of said named persons are interested to the extent of five percent or more of the total value of the outstanding stock therein, unless and until respondent or any of said named persons have complied in full with the requirements of this order.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent, Herman Hoyt Young, Herbert Salzer and Gerda Salzer. 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 JANUARY, 1968.

Robert E. Marshall
President

William L. Berne

Augusta

William Francis J.

Fred P. Manser
Commissioners