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ORIGINAL

Decision No. ~~73789~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, charges, and practices of RAGUS TRUCKING, INC., a corporation; THE AKRON, a corporation, and C and H SUGAR CORPORATION, Crockett.	Case No. 8694 Filed October 3, 1967

Phil Jacobson, for Ragus Trucking, Inc.; Halpern and Frankley by Lawrence R. Frankley, for The Akron; Eugene B. Morosoli, Jr., for California and Hawaiian Sugar Refining Corporation, respondents.
T. B. Kircher by Oscar Snyder, for Spreckels Sugar Company, interested party.
David R. Larrouy, Counsel, and Edward H. Hjelt, for the Commission staff.

O P I N I O N

By its order dated October 3, 1967, the Commission instituted an investigation into the operations, rates, charges and practices of Ragus Trucking, Inc., a corporation, hereinafter referred to as Ragus, The Akron, a corporation, hereinafter referred to as Akron, and C and H. Sugar Corporation, hereinafter referred to as C & H, for the purpose of determining whether respondent Ragus violated Sections 3664 and 3737 of the Public Utilities Code, and whether or not respondents Akron and C & H have entered into transportation contracts with respondent Ragus, and whether or not respondents Akron and C & H paid less than the applicable rates and charges for the transportation referred to in the contracts.

A public hearing was held before Examiner O'Leary at Los Angeles, on November 1 and 2, 1967, with the matter being submitted on the latter date.

Respondent Ragus presently conducts operations pursuant to Highway Contract Carrier Permit No. 19-55388. Its terminal is located at Los Angeles. It operates 44 pieces of equipment and employs 11 persons. Its gross operating revenue for the four quarters ending June 30, 1967 was $390,981. Copies of the appropriate tariff and distance table were served upon Ragus.

During the period January 16 to 20, 1967, a representative of the Commission's Field Section visited respondent Ragus' place of business and examined its records pertaining to transportation performed for respondents C & H and Akron.

Photocopies of the underlying documents relating to seven shipments transported for C & H during the period November 1966 to February 1967 were received in evidence as Exhibit 1. The staff alleges with respect to the seven shipments which comprise Exhibit 1 that Item 85 of Minimum Rate Tariff No. 2 was not complied with, in that the required information was not received from the consignor prior to or at the time of the first pickup (Parts 1, 2, 3 and 5), and that shipments were not picked up within the specified time period (Parts 4, 6 and 7). Based upon the data taken from the shipping documents as well as information supplied by the field representative, a rate study was prepared and received in evidence as Exhibit 2. Said exhibit reflects asserted undercharges of $278.65. It was stipulated that there was no transportation agreement other than the documents contained in Exhibit 1.

By Decision No. 71500, dated November 1, 1966, in Application No. 48636, Ragus was granted authority to perform transportation for Akron at rates less than the minimum set forth in Minimum Rate Tariff No. 2, but in no event lower in volume or effect than the charges and conditions set forth in Appendix A of said

decision. A copy of the decision was received in evidence as Exhibit 3. Appendix A of Decision No. 71500 provides that Ragus may transport freight of all kinds with certain exceptions in two 27-foot van trailers moving in combination from Akron's Warehouse at Sun Valley to Akron's retail store at San Francisco at a rate of $225 per load subject to a minimum of 20 loads per month. All loading and unloading services must be performed by Akron.

Photocopies of the underlying documents relating to transportation performed for Akron for the period August 1966 to February 1967 were received in evidence as Exhibits 4, 5 and 6. Exhibit 4 contains photocopies of documents pertaining to all shipments transported during December 1966 and January 1967 which were rated pursuant to the authority granted by Decision No. 71500. Said exhibit discloses that during December 1966 two trailers in combination were transported nine times and one trailer was transported nine times. During January two trailers in combination were transported 13 times and one trailer was transported four times. The representative testified that two instances of single trailer transportation would be combined for billing purposes. The billing for December was $2,925 computed on the basis of 13 loads at $225 per load and the billing for January was $3,600 computed on the basis of 16 loads at $225 per load. The staff contends with respect to the transportation covered by Exhibit 4 that Ragus should have assessed charges based on 20 loads for each month pursuant to the provisions contained in Appendix A of Decision No. 71500.

Exhibit 5 contains photocopies of documents pertaining to shipments transported between Sun Valley and San Francisco prior to the effective date of Decision No. 71500. All of the shipments in Exhibit 5, except Parts 3, 8, 10 and 11, consisted of two trailers

moving in combination from Sun Valley to San Francisco. Part 3 consisted of single trailers moving on two separate days which were combined for billing purposes. Parts 8, 10 and 11 consist of movements of one trailer northbound and one trailer southbound which were combined for billing purposes. All the shipments which are the subject of Exhibit 5 were billed at the rate of $225 per load. The documents do not contain any description of the commodities or the weights of the shipments. The staff alleges, with respect to the transportation covered by Exhibit 5, that Ragus failed to issue a shipping document and freight bill containing all of the information required by Item 255 of Minimum Rate Tariff No. 2 and also assessed charges based upon a unit of measurement different from that in which the minimum rates and charges are stated in violation of Item 257 of Minimum Rate Tariff No. 2.

Exhibit 6 contains photocopies of shipping documents pertaining to seven instances wherein the staff alleges that Ragus assessed the rate authorized by Decision No. 71500 on shipments which did not meet the conditions set forth in Appendix A of Decision No. 71500. The exhibit discloses that in four instances shipments were transported from San Francisco to Sun Valley rather than from Sun Valley to San Francisco. In one instance Ragus assessed the authorized $225 charge for one movement from Sun Valley to San Francisco and a return movement from San Francisco to Sun Valley. The exhibit also discloses that in four instances single trailers were transported from Sun Valley to San Francisco and that two single trailers were combined for billing purposes at a charge of $225 for each two trailers moved.

Exhibit 10 is a copy of an agreement dated June 6, 1966 between Ragus and Akron setting forth the services that Ragus would

provide for Akron from Los Angeles to the San Francisco Bay Area. It was stipulated that except to the extent applicable shipping orders and invoices constitute an agreement between Ragus and Akron: the only agreement between the parties was Exhibit 10.

The counsel for Ragus made a motion to expunge from the record the names of Akron and C & H as respondents on the basis that said firms are not carriers subject to the jurisdiction of this Commission. The motion was joined in by counsels for Akron and C & H and was taken under submission.

Akron and C & H were made parties respondent in this proceeding for the purpose of affording to them an opportunity to be heard, before any decision is reached herein, with respect to the question of whether the evidence established undercharges. In the case of Pellandini, et al. vs. Pacific Limestone Products, Inc. (1966) 245 C.A.2d 774, the court held that a shipper was bound by a decision of the Commission finding undercharges even where the shipper had not been made a party to the Commission proceeding against the carrier, on the ground that the shipper could have intervened in that proceeding at the time of hearing, or could have sought rescission of the Commission's decision after it was rendered. Making a shipper a party respondent at the time an investigation is commenced against a carrier gives to the shipper the opportunity to present direct testimony, to cross-examine witnesses and to offer argument at the time evidence on the question of undercharges is being received, and before decision. We see no reason now to obliterate from this record the evidence that Akron and C & H have been given such an opportunity. The motion will be denied.

With respect to the transportation performed for C & H the vice president of Ragus testified that at all times a minimum

of one set of doubles and usually two sets of doubles are available at the C & H plant located at Crockett to load sugar which is transported to Los Angeles.

The manager of C & H's distribution operations department testified that the dates as changed on the documents contained in Exhibit 1 correctly reflect the dates of pickup of the component parts and the dates on the master bills of lading correctly reflect the dates the fills were given to the carrier and that the dates which were changed were changed by personnel of C & H.

With respect to the transportation performed for Akron which is covered by Exhibits 4, 5 and 6, the vice president of Ragus and a rate expert both testified that in their opinions the $225 charge authorized by Decision No. 71500 would exceed the charges that would be realized had the shipments in question been rated in accordance with the terms of Minimum Rate Tariff No. 2. It was stipulated that there is no information available in the records of Ragus or Akron to show the commodities or weights of the shipments covered by the documents contained in Exhibits 4, 5 and 6.

Paragraphs 1 and 2 of Item 255 of Minimum Rate Tariff No. 2 provide that a shipping document shall be issued by the carrier to the consignor for each shipment received for transportation and that a freight bill shall be issued by the carrier for each shipment transported. The item also provides that the shipping document and the freight bill shall show certain information including the description of the shipment and the weight of the shipment (or other factor or unit of measurement upon which the charges are based).

Since the information necessary to rate the shipments in accordance with the provisions of Minimum Rate Tariff No. 2 is not available, it cannot be determined whether the $225 per shipment is more or less than the amount that Ragus would have received for the transportation had the shipments been rated in accordance with the terms of said tariff.

With respect to the shipments covered by Exhibit 5, there is no allegation that Ragus assessed less than the minimum rates. The inquiry pertains to whether or not Ragus failed to comply with paragraphs 1 and 2 of Item 255 and Item 257 of Minimum Rate Tariff No. 2 and whether Ragus conducted operations pursuant to the requested deviation prior to the effective date of Decision No. 71500.

With respect to the shipments covered by Exhibits 4 and 6, the question is whether or not Ragus failed to comply with the terms and conditions set forth in Appendix A of Decision No. 71500. The undisputed evidence submitted by the staff in Exhibit 4 discloses that for the months of December 1966 and January 1967 Ragus failed to comply with the 20-load minimum set forth in Note 2 of Appendix A to Decision No. 71500. The freight bills contained in Exhibit 4 and 6 show a charge of $225 "per Public Utilities Commission ruling or per Public Public Utilities Commission Decision No. 71500." Such a description can only mean that the shipments were transported pursuant to the authority granted by said decision. When transporting shipments pursuant to such authority all terms and conditions of the decision granting such authority must be complied with.

After consideration the Commission finds that:

1. Respondent Ragus operates pursuant to Highway Contract Carrier Permit No. 19-55388.

2. Respondent Ragus was served with the appropriate tariff and distance table.

3. Respondent Ragus charged less than the lawfully prescribed minimum rate for transportation performed for respondent C & H in the instances set forth in Exhibit 2 resulting in undercharges of $278.65.

4. Respondent Ragus failed to issue shipping documents and freight bills in accordance with the requirements set forth in Item 255 of Minimum Rate Tariff No. 2 in the instances set forth in Exhibit 5 and Exhibit 6, Parts 3, 4, 5 and 7.

5. Respondent Ragus did not assess charges in accordance with the provisions of Item 257 of Minimum Rate Tariff No. 2 in the instances set forth in Exhibit 5 and Exhibit 6, Parts 3, 4, 5 and 7.

6. Decision No. 71500 which became effective November 21, 1966 does not apply on shipments which move from San Francisco to Sun Valley.

7. Respondent Ragus billed respondent Akron for 13 loads during December 1966 and 16 loads during January 1967 rather than the 20-load per month minimum required by Decision No. 71500, resulting in undercharges of $2,475.

8. C & H and Akron are proper respondents to this proceeding.

Based upon the foregoing findings of fact the Commission concludes that: respondent Ragus violated Sections 3664 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of $2,753.65 and that in addition thereto respondent Ragus should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of $1,000. The Commission also concludes that the motion to expunge the names of Akron and C & H from the record as respondents should be denied.

The Commission expects that respondent Ragus 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 Ragus and the results thereof. If there is reason to believe that respondent Ragus or its attorney has not been diligent or has not taken all reasonable measures to collect the undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. The motion to expunge from the record the names of The Akron and C and H Sugar Corporation as respondents is denied.

2. Respondent Ragus Trucking, Inc., shall pay a fine of $3,753.65 to this Commission on or before the twentieth day after the effective date of this order.

3. Respondent Ragus Trucking, Inc., 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.

4. Respondent Ragus Trucking, Inc., 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 3 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, 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.

5. Respondent Ragus Trucking, Inc., 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 the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondents. The effective date of this order shall be twenty days after the completion of such service upon respondent Ragus Trucking, Inc.

Dated at San Francisco, California, this 27th day of FEBRUARY, 1968.

President

Commissioners

C.

WILLIAM M. BENNETT, COMMISSIONER, DISSENTING OPINION

There is an ever growing confusion concerning the power of this Commission to name shippers as respondents. As presently exercised--against my objection--it is arbitrary almost accidental and never pursuant to any consistent administrative practice. Simply because it has now been done upon more than one occasion such a practice is acquiring a certain acceptability.

This agency has no jurisdiction over a shipper. Shippers possess no permits or other privileges from this agency. Shippers may not obviously be suspended nor may a nonexistent permit or privilege be revoked. There is a body of law found in the Public Utilities Code which gives jurisdiction to other bodies where shippers in some way violate the provisons of the Public Utilities Code.

The notion has been advanced that in some way a shipper is denied due process if he is not joined in an undercharge proceeding. It should be borne in mind that the shipper could as well protest any rate whatsoever if as is usual such a shipper did not participate in proceedings to establish such rates. And so also could any utility customer whether of gas, electricity, or whatever refuse to pay a utility bill by urging that he did not participate in rate proceedings before this Commission leading to specific utility rates and charges. Clearly no utility rate payer may make such a defense in an action for the collection of utility charges nor may a shipper who is directed to pay charges which lawfully should have been assessed and collected.

The Public Utility Commission of the State of California was given the exclusive power to establish lawful rates whether for monopoly utilities or transportation charges. But one review was provided by law--the California Supreme Court. It was contemplated under the doctrine of primary jurisdiction and in this case pursuant to a specific constitutional and statutory scheme that the findings of this agency are binding upon truckers, shippers--the world.

And no shipper is entitled to argue that he is not required to pay a lawful rate simply because he did not have available to him the complete range of due process which obtains before the judiciary. And thus, if shippers are here being joined to accord them due process and in some way to apply further sanction to a lawful rate already established such is not only unnecessary but it is contrary to the constitutional and statutory scheme under which this agency operates. If it somehow is supposed to be a condition precedent toward the collection of undercharges again this notion is misplaced. And if it is intended in some way to impose a discipline upon a shipper again as a matter of law this is beyond our power save by directing an action to compel undercharges which lies with another forum.

In reality the device of naming shippers as respondents is but a poor substitute for the subpoena process. I suppose this practice will rock along undisturbed until the Commission itself awakens the fact that it is demeaning its own process or until some other party has the propriety of creating respondents out of shippers reviewed. I had thought that this matter was settled by Pellandini v. Pacific Limestone Products, Inc. (245 C.A.2d 777) and Pratt v. Coast Trucking, Inc. (228 C.A.2d 139).

WILLIAM M. BENNETT
Commissioner

Dated: San Francisco, California
February 27, 1968

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COMMISSIONER PETER E. MITCHELL DISSENTING:

The majority opinion finds that C & H Sugar Corporation and Akron (shippers) are pro respondents to this proceeding. I do not agree. There is no statute, no stare decisis which supports such a proposition. This is not to say that I do not comprehend or empathize with the expressions of the majority. Nevertheless, the probability that this principle of respondent-shipper is casuistic or juridic precludes my acquiescence.

The Ragus decision does not reconcile my original alienation recorded in 1967. At that time the Order Instituting Investigation was issued. There is at this time no need for further elaboration. The instant decision now exacts interposition of shippers as parties respondent "for the purpose of affording to them an opportunity to be heard, before any decision is reached herein, with respect to the question of whether the evidence established undercharges." The concomitant obligations represented by this decision requires the Commission not only to include shippers in its future orders of investigation but indeed as parties respondent, the Commission must now execute orders against them.[1/]

Peter E. Mitchell, President

San Francisco, California

February 29, 1968

1/ Order Instituting Investigation - Winfred P. Harris signed February 27, 1968 wherein this was not done.