

ORIGINAL

Decision No. 73864

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates, and practices of MILES &)
SONS TRUCKING SERVICE, a corpora-)
tion.)

Case No. 8716
(Filed October 27, 1967)

Frank Loughran, for respondent.
Donald M. Grant, Counsel, and E. E.
Cahoon, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates and practices of Miles & Sons Trucking Service, a corporation, hereinafter referred to as respondent.

Public hearing was held before Examiner Mooney on January 30, 1968, in San Francisco. The matter was submitted upon receipt of late-filed Exhibit 1 on February 2, 1968.

A written stipulation of facts signed by both respondent's attorney and staff counsel was filed at the outset of the hearing. The following are stated to be established facts in the stipulation and we so find:

1. The transportation which is the subject of the investigation herein is described in Appendix 1 to the stipulation. Eleven invoices submitted by respondent to Owl Slipform Concrete Co. during September 1966 are summarized therein. The invoices cover 114 loads of processed rock and sand transported in dump truck equipment from the same origin in Tracy to the same destination near Tracy.

2. The transportation in issue was subject to the applicable hourly rates provided in Section 4 of Minimum Rate Tariff No. 7.

C. 8716 bem

Since a Distance Rate Notice had not been executed, distance rates could not be applied.

3. Respondent charged and collected \$2,749.23 less than the applicable minimum charges for said transportation.

4. The undercharges resulted from Miles arbitrarily entering as deductible time on its delivery receipts covering the service in issue a portion of the time during which the equipment was actually engaged in performing the service. The resultant hours were, to the extent of such deductions, less than the actual number of hours of service on which charges should have been based. These deductions were made so that charges at hourly rates for the transportation performed would approximately equal a tonnage rate of 47 cents which was less than the minimum tonnage rate that would have been applicable had a distance rate notice been executed.

5. Three of the loads were subhauled by Sand Transportation Service for respondent. The difference between the amount already paid said subhauler and 95 percent of the applicable minimum charge, less authorized deductions, is \$56.80.

6. Four of the loads were subhauled by Robert Pine Trucking for respondent. The difference between the amount already paid said subhauler and 95 percent of the applicable minimum charge, less authorized deductions, is \$165.07.

7. At the time the transportation in question was performed respondent held radial highway common carrier, highway contract carrier and city carrier permits; certificates authorizing the transportation of petroleum products; and a cement carrier certificate. Also, at said time, respondent owned 198 power units and 415 trailer units, had a terminal in Merced and five subterminals and

C. 8716 bem

had over 300 employees. Respondent had gross operating revenues of \$6,826,151 for the year 1966 and \$5,220,352 for the first three quarters of 1967.

Respondent's attorney asserted that the undercharges resulted from the actions of a single employee who, unfortunately, was too eager to obtain business; that steps have been taken to assure that a similar occurrence will not happen again; and that respondent's current financial condition has not been good. In this connection, respondent's income statement for the year 1967 shows a substantial net loss (late-filed Exhibit 1).

It is noted that the type of violation herein is the so-called rate conversion in which a carrier observes rates other than tariff rates and falsifies its shipping documents to show that minimum hourly rates were assessed. This problem was considered by the Commission in Decision No. 69567, dated August 17, 1965, in Case No. 5437 (64 Cal.P.U.C. 689) wherein it stated that documentation falsification is a serious violation and will be punished by the imposition of heavy fines or suspensions. As to the allegation by respondent's attorney that undercharges resulted from the actions of a single employee, it is a well-settled rule of agency that the actions of an employee within the scope of his employment are imputed to his employer.

We concur with the staff that a fine in the amount of the undercharges found hereinabove (\$2,749.23) less the underpayments to be paid to subhaulers (\$221.87) should be imposed. The amount of said fine would be \$2,527.36. Based on a review of the entire record before us we are of the opinion that a punitive fine of \$1,500 should be imposed.

Based upon the findings of fact listed above, we conclude that:

1. Respondent violated Sections 3664, 3668 and 3737 of the Public Utilities Code.

2. Respondent should be required to pay underpayments in the amount of \$56.80 to Sand Transportation Service and \$165.07 to Robert Pine Trucking.

3. Respondent should pay a fine pursuant to Section 3800 of the Code in the amount of \$2,527.36 and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$1,500.

The Commission expects that respondent will promptly pay the underpayments referred to above to the involved subhaulers, and that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges shown in Appendix 1 to the written stipulation. 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 all underpayments to subhaulers have not been paid or that either respondent or its attorney has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of 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 \$4,027.36 to this Commission on or before the fortieth day after the effective date of this order.

2. Respondent shall pay underpayments in the amount of \$56.80 to Sand Transportation Service and \$165.07 to Robert Pine Trucking and shall notify the Commission in writing when said underpayments have been paid in full.

3. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein (Appendix 1 to the written stipulation) 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, 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 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.

C. 8716 bem

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 19th day of MARCH, 1968.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners