

ORIGINALDecision No. 73962

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates, and)
 practices of BUCK WILLIAMS TRUCKING,)
 INC., dba R. L. EVANS TRUCKING, a)
 corporation, and G. K. DONNELLY TRUCK)
 BROKERAGE. }

Case No. 8747
 (Filed January 16, 1968)

R. L. Evans, for Buck Williams Trucking, Inc.,
 respondent.
S. M. Boikan, Counsel, and E. H. Hjelt, for
 the Commission staff.

O P I N I O N

By its order dated January 16, 1968, the Commission instituted an investigation into the operations, rates and practices of Buck Williams Trucking, Inc., doing business as R. L. Evans Trucking, a corporation, and G. K. Donnelly Truck Brokerage.

A public hearing was held before Examiner Fraser on February 7, 1968, at Bakersfield.

Respondent presently conducts operations pursuant to a radial highway common carrier permit. Respondent has a terminal in Bakersfield, California. It owns and operates three tractors, three semitrailers and two full trailers. It employs three drivers and one office employee. Its gross revenue for the year ending on September 30, 1967, was \$46,030. Copies of appropriate tariff and distance tables were served upon respondent.

On August 1, 1967, a representative of the Commission's Field Section visited respondent's place of business and checked its records for the period from March 20, 1967 through June 19, 1967.

The underlying documents relating to 35 shipments were taken from respondent's files and photocopied. Said photocopies were submitted to the Rate Analysis Unit of the Commission's Transportation Division. Based upon the data taken from said photocopies a rate study was prepared and introduced in evidence as Exhibits 2, 3, 4 and 5. Said exhibits reflect purported undercharges in the amount of \$2,976.71. The commodities transported are rock or stone (Exhibits 2 and 3), three loads of salt (Exhibit 4), and a load of battery fluid (Exhibit 5).

A staff witness testified that the inspection of respondent's freight bills revealed all the rock and stone transported by respondent for two shippers (Exhibits 2 and 3) was paid for by Donnelly Truck Brokerage and that Donnelly retained 8 percent of each payment as a brokers fee. He testified that Evans advised these two shippers obtained all their truck transportation from Donnelly, who operates out of Phoenix, Arizona. The witness stated that he contacted the shippers; both advised they preferred dealing with Donnelly, who hired and paid the truckers they used. The witness testified that he then called Donnelly long distance, person-to-person, in Phoenix, Arizona, and was told that Donnelly had operated as a transportation broker in Arizona for many years; that he had no authority to operate as a transportation broker in California and had not realized that he needed a license to operate in this State. Donnelly advised the witness he had no office, terminal or equipment in California and that he did not normally operate out of the State of Arizona. Donnelly further advised the witness that he would discontinue all operations in California in the future.

Respondent Evans testified and corroborated the testimony of the staff witness. He testified he became involved with Donnelly when one of his drivers advised of two prospective customers with stone to be hauled. He further testified that he phoned the prospects and was told to contact Donnelly if he wanted the business. He stated that he was hired after he phoned Donnelly and agreed to pay the latter 8 percent of the gross business as a fee. He testified he always contacted Donnelly by calling him in Phoenix, Arizona; the last call was made during January 1968, when Donnelly advised he no longer handled any California business.

Staff counsel recommended that respondent Evans be fined only the amount of the undercharges. Counsel advised that the Commission had no personal jurisdiction over Donnelly. The latter resides in and is a citizen of Arizona, was never in California while dealing with Evans and was notified of the hearing by mail. Donnelly was not represented at the hearing and did not appear in person. Staff Counsel suggested that a cease and desist order be directed to Donnelly as a warning that future unlawful activity in this State will not be tolerated.

Discussion

Respondent Evans will be ordered to collect the undercharges and to pay a fine. The 8 percent paid to Donnelly will be disregarded. Donnelly is in another jurisdiction and was not in California when he arranged for or collected the money; any action to collect the 8 percent would have to be in the United States courts; the expense of litigation would be considerable and a favorable verdict would not necessarily follow. A cease and desist order will be issued as suggested, to warn Donnelly against future unlawful activity in California.

Findings and Conclusions

1. Respondent Buck Williams Trucking, Inc., doing business as R. L. Evans Trucking, a corporation, operates pursuant to a radial highway common carrier permit.

2. Respondent Buck Williams Trucking, Inc. was served with the appropriate tariffs and distance tables.

3. Respondent Buck Williams, Inc., doing business as R. L. Evans Trucking, a corporation, charged less than the lawfully prescribed minimum rates in the instances as set forth in Exhibits 2, 3, 4 and 5, resulting in undercharges in the amount of \$2,976.71.

4. Respondent G. K. Donnelly Truck Brokerage operates as a motor transportation broker in Phoenix, Arizona.

5. Respondent G. K. Donnelly Truck Brokerage has operated as a commission agent for California shippers by long-distance telephone calls to-or-from Phoenix, Arizona, to-or-from one or more California carriers; has arranged for transportation to be provided in California and has charged and collected a fee therefor.

6. Respondent G. K. Donnelly Truck Brokerage has never been issued nor applied for a license authorizing it to operate as a motor transportation broker in the State of California.

Based upon the foregoing findings of fact, the Commission concludes that respondent Buck Williams Trucking, Inc., doing business as R. L. Evans Trucking, has violated Sections 3664 and 3667 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$2,976.71.

The Commission further concludes that respondent G. K. Donnelly Truck Brokerage has violated Section 4832 of the Public Utilities Code and should be ordered to cease and desist.

The Commission expects that Buck Williams Trucking, Inc. 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 and the results thereof. If there is reason to believe 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 formally 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. Buck Williams Trucking, Inc. shall pay a fine of \$2,976.71 to this Commission on or before the fortieth day after the effective date of this order.
2. Buck Williams 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.
3. Buck Williams 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 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, Buck Williams Trucking, Inc. shall file with the Commission, on the first Monday of each month after the end of 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.

4. Buck Williams 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 this Commission.

5. G. K. Donnelly Truck Brokerage shall cease and desist from selling, offering for sale, negotiating for, or holding itself out as one who sells, furnishes or provides transportation by motor carrier over the public highways of this State, without first obtaining a license as a motor transportation broker.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Buck Williams Trucking, Inc., and to have a copy of the order mailed to the G. K. Donnelly Truck Brokerage in Phoenix, Arizona. The effective date of this order shall be twenty days after the completion of service on Buck Williams Trucking, Inc.

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

Stellman L. Bennett President
Augustus
William Francis J.
Paul P. Morrissey Commissioners

Commissioner Peter E. Mitchell

Present but not participating.