

Decision No. 74045**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations, rates and
 practices of SOUTHERN CALIFORNIA FREIGHT
 FORWARDERS, a corporation, and SOUTHERN
 CALIFORNIA FREIGHT LINES, LTD., a
 corporation.

Case No. 8756
 (Filed January 23, 1968)

C. J. Boddington, for respondents.
John C. Gilman, counsel, and E. H.
Hjelt, 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 Southern California Freight Forwarders, a corporation, and Southern California Freight Lines, Ltd., a corporation. An Answer to the Order Instituting Investigation was filed by respondent on March 1, 1968.

Public hearing was held before Examiner Mooney in San Francisco on March 14, 1968, on which date the matter was submitted.

Southern California Freight Forwarders operates pursuant to freight forwarder and express corporation certificates and a city carrier permit. Southern California Freight Lines operates pursuant to a highway common carrier certificate. The certificates held by both respondents are coextensive and cover the transportation of general commodities between the San Francisco Bay Area and Sacramento, on the north, and the Mexican Border, on the south. Together they operate 236 trucks, 170 tractors and 274 trailers. The gross operating revenue reported for Southern California Freight Lines for 1967 was \$9,040,630. Respondents are under common ownership, interest,

management and control with Oregon Nevada California Fast Freight, Inc., and all terminals and employees are under this integrated arrangement. The general office of the respondents is located in Palo Alto.

On the last day of May and the first several days of June 1967, a representative of the Commission's Field Section visited respondents' terminal in San Diego and checked their records for the transportation of celery and choy from the San Diego area to the Los Angeles area for the months of January, February and March 1967. The representative stated that the manager of the San Diego terminal made all records regarding the celery and choy shipments available and instructed an employee to furnish him with any additional information he requested. The witness testified that said employee furnished the following information: It was his responsibility to obtain additional traffic for respondents in the San Diego area; to accomplish this, he contacted shippers of celery and choy in the area and agreed to transport their freight to the Los Angeles area at a flat rate of 25 cents per crate rather than the applicable rates in respondents' common carrier tariff; to make the billing appear correct, the applicable tariff rate and an incorrect weight were shown on each document; the charge produced by multiplying the incorrect weight by the proper tariff rate approximated the charge produced by multiplying the agreed 25 cent rate by the number of crates shipped; he was knowledgeable of the correct procedure that should have been followed in rating the transportation; this practice was commenced approximately three years ago and was terminated on February 6, 1967; and, subsequent to said date, the correct weight

and tariff rate and charge have been billed and collected for all celery and choy shipments.

Exhibits were introduced by both the staff (Exhibits 1 through 9) and the respondents (Exhibit 10) showing the amount of undercharges on the shipments in issue. While there were some differences in the amount of undercharges shown in the staff and respondents' exhibits due to the weight used for the various shipping crates by each, both agreed that the correct amount of undercharges for the transportation performed for the nine shippers involved was \$1,907.56.

The president of respondents introduced in evidence Exhibit 10, which is a copy of respondents' Answer to the Order Instituting Investigation, and testified in support thereof. The evidence presented by respondents is as follows: Upon receipt of the investigation order, respondents immediately issued balance due bills to all accounts involved; with the exception of \$93 due from one account, all undercharges have been collected, and legal action has been instituted against said account for the \$93; respondents issue in excess of 7,000 freight bills per day; a post-audit department reviews all freight bills for shipment weighing over 3,000 pounds or with freight charges over \$35 or for which the shipper does not pay the billed amount; respondents' solicitor for produce traffic reported to the general office on February 1, 1967, that although the number of shipments of celery and choy from the San Diego area for January 1967 were approximately the same as for the same month the previous year, the revenue and tonnage were less; in answer to inquiries from the general office, the manager of the San Diego Terminal advised that an employee had been delegated the responsibility for picking up produce in the area, and this employee agreed with

shippers, as did other carriers, to transport celery and choy at the 25 cents per crate rate; this was undoubtedly due to shipper pressure; said employee receives the highest overtime of any of respondents' employees at the San Diego Terminal; if respondents were to lose any of their produce traffic in the area, his overtime pay would be reduced and perhaps eliminated; he most likely was not familiar with tariffs; he is a union member and any disciplinary action against him by respondents would be extremely difficult and could cause serious problems; the freight bills for the transportation in issue were prepared by a billing clerk who obtained the weight from the bill of lading which is almost always prepared by the shipper; upon receipt of information regarding the falsified weights on February 2, 1967, management immediately issued instructions to cease this practice; this was several months prior to the commencement of the investigation herein; as a result, respondents lost a substantial amount of the celery and choy traffic they had been handling; in this connection, the amount of said traffic handled by respondents dwindled from 505,310 pounds in February 1966 to 305,525 pounds in February 1967, and the estimated loss of revenue between the two years is approximately \$2,800; management is of the opinion that the matter under investigation did not occur in prior years although it has not verified this; steps have been taken to assure that improper weights will not be used in the future; and, it is respondents' policy to adhere strictly to tariff rates and Commission regulations.

In closing, staff counsel argued that respondents admit the documents for the transportation in issue were falsified; that this is a particularly grievous offense; and that a fine in the amount of

the undercharges herein plus an additional punitive fine of \$1,500 should be imposed on respondents. In answer thereto, the vice president of respondents urged that the facts and circumstances herein do not warrant the imposition of any fines whatsoever. In support of his position, he asserted that to single out respondents and impose a fine on them alone when other carriers were engaged in the same practice would be patently unjust; that this would not deter other carriers and would only result in adverse publicity to respondents and possible loss of other unrelated business; that as soon as this matter was brought to respondents' attention, it was corrected; and, that practically all of the undercharges have heretofore been collected and legal action has been instituted to collect the small amount outstanding.

Discussion

Respondents and the staff both agree that undercharges did occur, and there is no controversy regarding the amount thereof. The only issue remaining for our consideration is the penalty, if any, that should be imposed on respondents.

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 applicable tariff rates were assessed. We concur with the staff that this is a serious offense, and we have consistently so held. As to the allegation by the vice president of respondents that said violations resulted from the actions of a single employee without the approval or knowledge of management, it is a well-settled rule of agency, which we have reiterated in numerous prior decisions, that the actions of an employee

within the scope of his employment are imputed to his employer. Furthermore, we are not concerned here with the question of whether other carriers may have been engaged in the same unlawful practice with which respondents are charged. We are here investigating the operations of respondents to determine whether they have been engaged in unlawful activities. Even assuming that other carriers were in fact engaged in the same activity under investigation, which fact has not been established on this record, this would in no way excuse respondents from any of the liability imposed on them by law for such actions.

Based on a review of the entire record, we will impose a fine in the amount of the undercharges found herein and, in addition thereto, a punitive fine in the amount of \$500. We have taken into account in arriving at the amount of the punitive fine that the violations represent only an isolated segment of respondents' business and account for a very small percentage of the total volume of traffic handled by them during the period of time covered by the staff review.

Findings and Conclusions

The Commission finds that:

1. Southern California Freight Forwarders, a corporation, operates pursuant to freight forwarder and express corporation certificates and a city carrier permit.
2. Southern California Freight Lines, Ltd., a corporation, operates pursuant to a highway common carrier certificate.
3. The certificated authority of both respondents are co-extensive and cover the transportation of general commodities between

the San Francisco Bay Area and Sacramento, on the north, and the Mexican Border, on the south.

4. Respondents are under common ownership, interest, management and control.

5. Respondents charged less than their lawful tariff rates for the transportation covered by Exhibits 1 through 9, resulting in undercharges in the amount of \$1,907.56.

6. Subsequent to the issuance of the investigation order but prior to the hearing in this matter, respondents collected all but \$93 of the undercharges referred to in Finding 5.

7. Respondents have instituted legal action to collect the remaining \$93 in undercharges referred to in Finding 6.

Based upon the foregoing findings of fact the Commission concludes that respondents violated Sections 453, 458, 494 and 532 of the Public Utilities Code and should pay a fine pursuant to Section 2100 of the Public Utilities Code in the amount of \$1,907.56, and in addition thereto respondent should pay a fine pursuant to Section 1070 of the Public Utilities Code in the amount of \$500.

O R D E R

IT IS ORDERED that:

1. Respondents shall pay a fine of \$2,407.56 to this Commission on or before the fortieth day after the effective date of this order.

2. In the event undercharges of \$93.00 referred to in Finding No. 7 remains uncollected sixty days after the effective date of this order, respondents shall file with the Commission, on the first

Monday of each month after the end of said sixty days, a report on the status of the legal action that was filed to collect such undercharges and the result thereof, until such undercharges have been collected in full or until further order of the Commission.

3. Respondents shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a different amount than the applicable tariff rates and charges.

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.

Dated at San Francisco, California, this 30th day of APRIL 1968.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.