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**ORIGINAL**

Decision No. 74052

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 MARKET EXPRESS, INC., a corporation; and SANTA CLARA PRODUCE, INC., a corporation.

Case No. 8751  
(Filed January 16, 1968)

Fred C. Ferro, for Santa Clara Produce, Inc.;  
John E. Mancebo, for Market Express, Inc.,  
respondents.  
Donald M. Grant, Counsel, and J. B. Hannigan,  
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, charges and practices of Market Express, Inc., a corporation, hereinafter referred to as Market, and Santa Clara Produce, Inc., hereinafter referred to as Produce, for the purposes of determining whether respondent Market violated Sections 3664, 3667 and 3737 of the Public Utilities Code and whether respondent Produce violated Section 3669 of the Public Utilities Code.

A public hearing was held before Examiner O'Leary at Fresno on March 12, 1968, on which date the matter was submitted.

Respondent Market conducts operations pursuant to Radial Highway Common Carrier Permit No. 10-9333 and Highway Contract Carrier Permit No. 10-9334. Its main office and terminal are located at Fresno; terminals are also maintained at San Francisco, Los Angeles and Tulare. It employs 22 persons and operates 19 power vehicles and 23 semitrailers. Its gross operating revenue for 1967 was \$1,324,844. Copies of the appropriate tariffs and

distance table were served upon respondent Market. Respondent Produce was served with Minimum Rate Tariff No. 8 and Distance Table No. 5 on February 9, 1967.

On April 17 and during the period May 8 to 12, 1967, a representative of the Commission's staff visited respondent Market's Fresno office and examined its transportation records for the period January to April 1967, inclusive.

Photocopies of the underlying documents relating to transportation performed for Produce, Maier Brewing Company, H. J. Heinz Co. and Kraft Foods were received in evidence as Exhibits 1 to 8, inclusive. Exhibit 12 is a representative's survey report which contains information with respect to five points of origin and/or destination. Based upon the data taken from the documents contained in Exhibits 1 through 8 and 12, as well as information supplied by the field representative, rate studies were prepared and introduced in evidence as Exhibits 13 through 16. The exhibits disclose alleged undercharges, as follows:

<u>Exhibit</u>	<u>Undercharge</u>
13	\$6,641.31
14	332.37
15	296.71
16	62.94

Exhibit 13 pertains to 82 shipments transported for respondent Produce. The documents covering said shipments are contained in Exhibits 1, 2, 3, 4 and 5. The amounts shown on the freight bills contained in Exhibits 1 through 5 are the amounts respondent Market billed respondent Produce for the transportation in question. Upon receipt of the bills, respondent Produce altered the weights and charges and paid respondent Market for each of the 82 shipments an amount less than the amount billed. Copies of the

altered bills are contained in Exhibit 8. The alleged undercharges set forth on 35 shipments in Exhibit 13 (Parts 3, 17, 20, 22, 25, 26, 27, 28, 30, 31, 32, 35, 36, 37, 38, 39, 40, 43, 44, 45, 46, 47, 48, 49, 50, 51, 60, 61, 67, 68, 69, 70, 74, 77 and 79) are caused solely because of the payment by Produce in a lesser amount than the billed amount. The alleged undercharges on the remaining 47 shipments of Exhibit 13 are caused partially by the payment in the lesser amount and partially because of respondent Market's failure to assess mechanical refrigeration charges, failure to protect minimum weights and failure to comply with all of the provisions of the produce service shipment rule in Minimum Rate Tariff No. 8.

An exchange of correspondence between respondents Market and Produce concerning the reductions of the billed amount on three freight bills which are not part of this proceeding comprises Exhibits 9, 10 and 11.

Exhibits 6 and 14 pertain to 17 shipments transported for Maier Brewing Company. The exhibits disclose that in sixteen instances respondent Market did not assess charges for the return of pallets to the consignor and that in eight instances improper rates were assessed on shipments of beer.

Exhibits 7, 15 and 16 pertain to four shipments transported for H. J. Heinz Co. and one shipment transported for Kraft Foods, Inc. The undercharges result from the improper use of rail rates.

The president of respondent Market testified that he sent balance due bills to respondent Produce requesting payment of the differences between the amount billed and the amount paid and that said differences were carried on respondent Market's books as a balance due. He also testified that at the end of 1967 he sent a

letter to respondent Produce demanding payment of the balance due and that in January 1968 a check for \$6,628.75 was received from respondent Produce in payment of said balance due. With respect to transportation performed for Maier Brewing Company, he testified that he was not aware that the pallets could not be returned free of charge. With respect to the alleged undercharges in connection with the shipments of beer and the shipments transported for H. J. Heinz Co. and Kraft Foods, he testified that his company hired a professional rate consultant and that since the rating errors were discovered by the Commission staff his company looked for a new rate man. No evidence was presented by respondent Produce.

After consideration, the Commission finds that:

1. Respondent Market operates pursuant to Radial Highway Common Carrier Permit No. 10-9333 and Highway Contract Carrier Permit No. 10-9334.
2. Respondent Market was served with the appropriate tariffs and distance table.
3. Respondent Market charged less than the lawfully prescribed minimum rate for transportation performed for respondent Produce as set forth in Exhibit 13, Parts 1, 2, 4 to 16, inclusive; 18, 19, 21, 23, 24, 29, 33, 34, 41, 42, 52 to 59, inclusive; 62 to 66, inclusive; 71, 72, 73, 75, 76, 78, 80, 81 and 82, resulting in undercharges of \$1,931.20.
4. Respondent Market charged the lawfully prescribed minimum rate or more for transportation performed for respondent Produce as set forth in Exhibit 13, Parts 3, 17, 20, 22, 25, 26, 27, 28, 30, 31, 32, 35 to 40, inclusive; 43 to 51, inclusive; 60, 61, 67, 68, 69, 70, 74, 77 and 79.

5. Respondent Produce originally paid respondent Market \$5,162.99 less than the amount billed for the 82 shipments covered by Exhibit 13, resulting in additional undercharges of \$4,710.01.

6. Subsequently, respondent Market received a check from respondent Produce in the amount of \$6,628.75 which included the \$5,162.99 difference between the amount originally paid and the billed amount, thereby eliminating the undercharges set forth in Finding 5.

7. Respondent Market charged less than the lawfully prescribed minimum rate for transportation performed for Maier Brewing Company, H. J. Heinz Co. and Kraft Foods, Inc., in the instances set forth in Exhibits 14, 15 and 16, resulting in undercharges of \$692.02.

8. The record herein does not show that respondent Produce presently is in violation of Section 3669 of the Public Utilities Code.

Based upon the foregoing findings of fact the Commission concludes that respondent Market violated Sections 3664, 3667 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 \$2,623.22.

The Commission expects that respondent Market 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 Market and the results thereof. If there is reason to believe that respondent Market 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. Respondent Market Express, Inc. shall pay a fine of \$2,623.22 to this Commission on or before the fortieth day after the effective date of this order.
2. Said respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges as set forth herein and shall notify the Commission in writing upon the consummation of such collections.
3. Said respondent 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, 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.
4. Said respondent 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.

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 Market Express, Inc.

Dated at San Francisco, California, this 30<sup>th</sup> 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.