

Decision No. 74068**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the rates,
operations and practices of ZEBRA
TRUCKING, a corporation.

Case No. 8733

Edwin R. Baltimore and B. M. Ellis, for respondent.

Marshall A. Staunton, of Johnson and Stanton,
for William P. Rus, Inc., interested party.
Elmer Sjoström, Counsel, and J. B. Hannigan,
for the Commission staff.

O P I N I O N

By its order dated December 12, 1967, the Commission instituted an investigation into the operations, rates and practices of Zebra Trucking, a corporation, hereinafter referred to as Zebra.

A public hearing was held before Examiner Fraser on January 9 and 15, 1968, at San Francisco and the matter was submitted.

Respondent presently holds permits and operates as a radial highway common carrier, highway contract carrier and city carrier. It operates out of a single terminal in Concord, California, with three employees and no equipment. Its gross revenue for the four quarters ending with the third quarter of 1967 was \$631,302. Copies of the appropriate tariff and distance tables were served upon respondent.

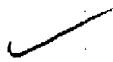
A representative of the Commission's Field Section visited the respondent's place of business on November 14 through 18, 21, 22 and December 12 and 13, 1966; 900 freight bills were reviewed concerning all transportation performed by respondent from

September 12, 1966 to October 26, 1966. Hundreds of documents were withdrawn and photocopied.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 Exhibit 3. Said exhibit reflects purported undercharges in the amount of \$9,315.53 and an alleged failure to pay subhaulers (Parts 2, 9, 17 of Exhibit 3) in the sum of \$884.44.

The staff representative who examined the respondent's records testified as follows: Item 300 of Minimum Rate Tariff No. 7 requires that dump truck shipments be rated on an hourly basis, and that "in determining chargeable time, the overall time shall be: From time reporting for work to start of last trip plus double the running time of last trip plus unloading time of last load"; respondent's records indicated that charges were assessed on a contractual basis at 28-1/4 cents a ton (Attachment C, Exhibit 1); this was confirmed by several of respondent's employees; respondent corporation is a cooperative consisting of 18 to 20 members who hold stock and drive their individually owned trucks; three of those who hauled were not listed on the membership roster and are therefore listed as subhaulers (Parts 2, 9, 17 of Exhibit 3); the records reveal that these underlying carriers were not paid 95% of the minimum rate charged as required by Item 94 of Minimum Rate Tariff No. 7; the freight bills prepared by respondent do not provide all of the information required by Item 93.1 of Minimum Rate Tariff No. 7; some have only the date, job title and total tons hauled for the day (Section 1, Exhibit 1); others added only the rate per ton or the weight of individual loads; items such as capacity of truck, carrier's name, origin, commodity, time reported for work, time to

load or unload, hourly rate, job site, time in transit were not filled in; it was therefore impossible to determine what rate to charge by looking at the freight bills as they do not have sufficient information; the records further reveal that the tonnage was converted to spurious hours - worked by the unauthorized formula of dividing the total ton revenue hauled every day by the hourly rate (Attachment C, Exhibit 1); this job was the first one performed by Zebra which received its permit in June, 1966; the witness was advised that a Mr. Burbank had negotiated the contract with William P. Rus, Inc., hereinafter called Rus, a California corporation, in the business of general contracting, for 28-1/4 cents a ton and had represented Zebra in handling the job.

The witness further testified that it was necessary to determine the number of hours each truck was employed in each working day as a basis for the rate to be charged; that he obtained this information from the weight tags on each shipment by driving the distances involved himself and from information provided by the respondent's officers and drivers. The witness noted that the columns on each part in Exhibit 3 headed "Billed" show the fictitious figure given as the charge assessed by respondent; these amounts were obtained by converting the



tonnage hauled each day to hours and multiplying by the hourly rate. ✓
This resulted in what was identified as the rate billed for the transportation performed by the truck on the day selected. He testified these rates were fictitious because respondent actually billed at 28-1/4 cents per ton on the total tonnage hauled during the period covered by the staff investigation. The witness stated that respondent's records were incomplete and it was necessary to obtain the information needed from the best available source.

The respondent's witness testified as follows: Zebra started operations in June of 1966; it completed two small jobs and in August of 1966 submitted the lowest bid and was hired on the Grove-Shafter Freeway project; the hauling on the freeway resulted in the undercharges alleged herein; the freeway job was obtained for Zebra by a man named Burbank, who was hired on a salary plus commission, as an expert on transportation rates, hauling and regulation; Burbank advised the witness that the rate to be charged was lawful and well above the prescribed minimum; also that the man who was to load the trucks and spread the dirt after it was dumped had new equipment and was experienced; Burbank further advised that the scale man (who weighed the trucks) would be paid by the State; hauling started during September (1966) and trucks were continually delayed (for hours waiting to load) due to breakdowns in the loader's equipment; his machines were very old--no spare parts were available--and mechanics preferred to repair more modern equipment; these delays were not the fault of either the trucker or the sub-

contractor (Rus) and it would have been unfair to charge for every hour the trucks were on the job, although staff testimony indicates the tariff requires that it be done; the man who contracted to load the trucks was also responsible for spreading and compacting the earth after it was dumped; this job was not accomplished correctly either, and two trucks overturned due to faults in the roadway; Zebra estimated a daily three-hour delay due to the loading and compacting difficulties; shortly after the job was started Zebra was advised to pay the scale man; Zebra was required to continue paying him although Burbank had originally represented that another party would be responsible; Burbank was discharged by Zebra after about three months of employment when it became obvious that the loader he selected could not do the job and that Zebra could not transport the required tonnage as a result thereof; conditions improved for everyone when a new loader was obtained in December; Zebra hired Burbank as a rate expert to ensure proper observance of all tariff regulations; he charged by the ton hauled which was in accord with the guarantee provided by Zebra that at least an agreed upon minimum tonnage would be hauled every day; Zebra relied on Burbank and was never informed of the erroneous rates until the present action was filed. He further testified that the men mentioned in Parts 2, 9 and 17 of Exhibit 3 were members of respondent corporation at the time they performed this hauling. They then resigned and a later membership list turned over to the staff investigator did not include their names.

A representative of the shipper testified. He stated he was the president of Rus. He testified a man named Bywater came to his office in early September, 1966, and suggested that Rus and Bywater combine in a joint venture under a contract to load the

trucks and compact the roadbed on the Grove-Shafter Freeway Project. The witness testified that Bywater had been unable to obtain the required bond to participate in the freeway project and was anxious to combine with Rus because the latter qualified for the necessary bond. He further testified that Bywater had been working with Burbank of Zebra Trucking to land the contract with the latter doing the hauling. When it became evident that Zebra did not qualify for a bond either, Bywater renegotiated with the witness and Rus was to furnish the bond for Zebra and Bywater in return for a fee of 5 cents a ton on everything hauled by Zebra. He stated Rus was not involved on the job other than to provide a bond for Bywater and Zebra. He testified the equipment provided by Bywater was inadequate and kept breaking down; this slowed the hauling process and the job fell way behind schedule. He stated that the principal contractor finally replaced Bywater in December, 1966, and the job speeded up to conform to the contracts. The witness stated that both Zebra and Bywater assured Rus that all rates and regulations were being properly observed and it was impossible under the circumstances for Rus to regulate what was being charged. Rus had dealt with Burbank for eight years and he seemed to be a reliable man. The witness testified that Atkinson was the principal contractor who paid Rus and Rus paid Zebra. If it were not for the bond requirement Atkinson would probably have been dealing directly with Zebra. He further stated that the regulations promulgated by the Department of Public Works of the State of California require hauling on a freeway to be on the basis of tons hauled. This is traditional and errors are certain when another State agency requires the jobs to be rated on a time basis.

Staff counsel recommended a punitive fine of \$500 in addition to the amount of the undercharges. Counsel for the respondent made a motion to dismiss the investigation proceeding on the basis of prejudice and lack of equal protection of the law. Counsel stated that the Department of Public Works insisted that all contracts and hauling be on a tonnage basis while the Public Utilities Commission regulated hauling on a time-on-the-job basis. The two systems are opposed, requiring two sets of records and working a serious prejudice on those who haul for freeway projects. Counsel for Rus emphasized that Rus was involved solely to qualify Zebra for a bond and did not perform any other function. He noted that Zebra would have contracted directly with Atkinson had there been no bond requirement.

Discussion

Carriers are responsible for observance of the minimum rate regulations and for the authenticity of the rates they assess and collect. Ignorance, adversity, error, inadvertence, or reliance on another do not excuse the application of the basic rule. A contrary decision would be an authorization for anyone with a good excuse to violate the law. The respondent will therefore be ordered to collect the undercharges that have occurred.

The motion to dismiss the proceeding will be denied. The privilege of operating a business is accompanied by a responsibility to observe the rules of the varied regulatory agencies concerned with the business. The record does not justify the imposition of a punitive fine.

Rus and Atkinson were the principal parties on the hauling contract with the former acting as a guarantor - under bond - that the hauling would be accomplished on schedule. Rus was reimbursed for this service out of the proceeds and paid Zebra out of the funds received from Atkinson. Rus cannot avoid responsibility now by claiming that it did no work on the freeway project.

Findings and Conclusions

1. Respondent presently operates pursuant to radial highway common carrier, highway contract carrier and city carrier permits.
2. Respondent was served with the appropriate tariffs and distance tables.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 3, resulting in undercharges in the amount of \$9,315.53.
4. The transportation identified in Parts 2, 9 and 17 of Exhibit 3 was performed by member operators and not subhaulers.
5. All of the freight bills prepared by the respondent to describe transportation performed during the period of investigation lacked most of the information required by Item 93.1 of Minimum Rate Tariff No. 7.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 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 \$9,315.53.

The Commission expects that respondent 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. Respondent shall pay a fine of \$9,315.53 to this Commission on or before the fortieth day after the effective date of this order.
2. Respondent 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. 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. 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 respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this
7th day of MAY, 1968.

Robert E. Mitchell
President

William C. Bennett

Augusta

William J. Jones

Jack P. Morrissey
Commissioners