

ORIGINAL

Decision No. 75891

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the rates,)
operations and practices of)
FOREST D. MORGAN.)

Case No. 8791
(Filed April 30, 1968)

Marshall A. Smith, Jr., traffic consultant,
for respondent.
Gallagher, Baker & Manock, by Kendall L. Manock,
for Harris Feeding Company, interested party.
Elmer Sjostrom, Counsel, and J. B. Hannigan, for
the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the rates, operations and practices of Forest D. Morgan, an individual, for the purpose of determining whether respondent violated Sections 3667 and 3737 of the Public Utilities Code by charging and collecting less than the minimum charges prescribed in Minimum Rate Tariff No. 14-A (MRT 14-A).

Public hearing was held before Examiner Mooney in Fresno on August 29, 1968. The matter was submitted subject to the receipt of a late-filed exhibit. Said exhibit was filed by respondent on November 6, 1968.

Respondent operates pursuant to Radial Highway Common Carrier Permit No. 10-8690. He has no terminal. His office is at his home in Laton. He employs four regular drivers and additional drivers when required to meet peak seasonal demands. He owns five tractors, one of which is being repaired, and four sets of flat bed trailers. In addition, he leases three tractors and three sets

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of flat bed trailers. The equipment is generally parked at the Jack Harris Ranch and occasionally at respondent's home. His gross operating revenue for the year ending June 30, 1968 was \$154,825. Copies of appropriate minimum rate tariffs and distance tables were served on respondent.

On various days during September and October 1967, a representative of the Commission's Field Section visited respondent's place of business and checked his records covering the transportation of bulk barley for Harris Feeding Co. (Harris) during the period May 17, 1967 through July 11, 1967. Photocopies of the underlying documents for said transportation were received in evidence as Exhibits 1 through 6. The representative testified as follows: 39 documents did not include any information regarding the location of the point of origin; he was able to develop this information from Vista del Llano Farms from whose fields the shipments covered by said documents were picked up; respondent's wife informed him that there were no written shipping instructions issued by Harris for split pickup shipments and that respondent had in the past been employed by Harris; she furnished him with the precise location of the destinations shown on a number of the documents as "Storage 1, 2, 3 or 4"; respondent verified that all information furnished by Vista del Llano Farms or his wife was correct; he checked all necessary off-highway mileages from fields at which shipments had been picked up and also to delivery points; said mileages are summarized in Exhibit 7; the odometer of the State car used to check the mileages had been calibrated.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibits 1 through 6, together with the

supplemental information in Exhibit 7 and that testified to by the representative, and formulated Exhibit 8, which shows the rate and charge assessed by respondent, the rate and charge computed by the staff and the amount of the alleged undercharges for the 468 sets of documents in Exhibits 1 through 6. The staff alleged that the rate errors shown in Exhibit 8 resulted from respondent's failure to base charges on applicable minimum weights; his failure to use correct constructive mileages in determining distances; and combining separate shipments as split pickup shipments in instances where the documentation provisions of the split pickup rule in Items 150 and 151 of MRT 14-A had not been complied with. The rate expert explained that the distance table prohibits the calculation of constructive mileage between points on the maps in the distance table via a road not shown on said maps.

The secretary and business manager of Harris testified as follows: No one at Harris is familiar with transportation rates; the invoices submitted by respondent were paid; it was assumed that the charges were correct; "Storage 1" is located at the Harris feed lot, and "Storage 2 and 3" are on the same property and are part of the same receiving area; "Storage 4" is at a separate location at the Sandell Ranch; Harris maintains records showing the destination of the shipments transported by respondent (Exhibit 10); Harris also uses other carriers besides respondent, and during peak periods, might use as many as six additional carriers.

Respondent testified that he has been in the trucking business since 1956 and has always had Harris as a customer. He stated that the transportation of grain products, including barley, accounts for 20 percent of his business and that all of said hauling is for Harris. The balance of his business, he asserted, involves

the transportation of rate exempt agricultural commodities. The witness verified the information furnished by the secretary and business manager of Harris regarding the location of the Harris storage facilities as correct and stated that he did not recall discussing this matter with the staff. He stated, however, that his wife may have furnished incorrect information regarding the location of said facilities to the staff representative. Respondent produced photocopies of written shipping instructions from Harris and documents prepared by Vista del Llano Farms for the split pickup shipments covered by Parts 444 through 467 of the staff's Exhibits 6 and 8. Said photocopies are all included in Exhibit 11. The staff pointed out that none of the documents in Exhibit 11 were shown to its investigator. The witness testified that he did not know why this was not done. He asserted that the written instructions were prepared by Harris to confirm oral instructions. He explained that most of the rating errors resulted from calculating constructive distances between points on the system of roads shown on the maps in the distance table via a road not included in said map; that this method produced lesser mileages and lower resulting charges; and that he was not aware that the rules in the distance table prohibit this. Respondent testified that his wife does the rating; that there was never any intent to charge less than applicable rates; and that the one shipment for which no charge had been assessed was an inadvertent oversight.

The staff agreed that in view of the evidence presented by the witness for Harris and by respondent regarding the correct locations of "Storage 1, 2, 3 and 4" a number of the ratings shown in its Exhibit 8 would have to be revised. Respondent's late-filed

Exhibit 12 contains said revisions. The total amount of undercharge shown in the staff's Exhibit 8, as revised by respondent's Exhibit 12 to reflect the correct location of "Storage 1, 2, 3 and 4", is \$3,588.28.

Discussion

Parts 444 through 467 of the staff exhibits each cover transportation which was picked up at two separate locations. In addition, the transportation covered by Part 444 was delivered to two separate locations. We concur with the staff that the transportation covered by Part 444 should be rated as two separate shipments. In this connection, paragraph 7 of the Split Pickup Rule in Items 150 and 151 of MRT 14-A provides in part that if split delivery is performed on a split pickup shipment, each component shall be rated as a separate shipment. As to the balance of said parts, there is a serious doubt as to whether the transportation represented by each part may be rated as a split pickup shipment. However, the record is not entirely clear on this point. Even by rating the transportation covered by each of Parts 445 through 467 as a split pickup shipment, undercharges in the amount of \$421.10 would result. By rating the component pickups covered by each of said parts as separate shipments, the total undercharge for said parts would be \$668.34. While we will give respondent the benefit of the doubt in this proceeding and find that undercharges in the amount of \$421.10 exist in connection with Parts 445 through 467, respondent is placed on notice that clear, concise and complete compliance with all documentation provisions and tariff rules governing split pickup shipments will be required in the future and that failure to do so will not be tolerated.

With respect to respondent's calculation of constructive distance between points shown on the system of maps in the distance table via a road not shown thereon, we agree with the staff that this is improper. The rules in the distance table provide that the applicable constructive distance shown therein must be applied between such points.

The staff recommended a fine in the amount of the undercharges found herein plus a punitive fine in the amount of \$500 be imposed on respondent. The respondent's traffic consultant argued that respondent was not aware any of the charges he assessed were below the minimum level established by the Commission; that respondent has now engaged a traffic consultant to assure rate errors will not occur in the future; and that a fine would cause a severe hardship on respondent. From a review of all the facts and circumstances herein, we concur with the staff recommendation.

Findings and Conclusions

The Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 10-8690.
2. Respondent was served with applicable minimum rate tariffs and distance tables, together with all supplements and additions thereto.
3. The transportation covered by Part 444 of Exhibit 8 was picked up at two separate origins and delivered to two separate destinations and, in accordance with paragraph 7, Item 151, MRT 14-A, must be rated as two separate shipments.
4. The transportation covered by each of Parts 445 through 467 of Exhibit 8 was picked up at two separate origins and delivered to a

single destination. The evidence is not entirely clear as to whether the component pickups in each part should be rated as a split pickup shipment or as separate shipments. By rating each of said parts as split pickup shipments, undercharges totaling \$421.10 exist in connection therewith. By rating the component pickups in each part as a separate shipment, the amount of the undercharges would be increased. While no finding will be made herein as to whether the transportation covered by Parts 445 through 467 should be rated as split pickup or separate shipments, undercharges of at least \$421.10 do exist in connection with said parts, and we so find.

5. Respondent did not make available to the staff during its investigation, or at any time prior to the hearing, the additional documents introduced by him as Exhibit 11 for the transportation covered by Parts 445 through 467 of the staff exhibits.

(In this connection, respondent is placed on notice that he is required by law to make available to authorized Commission representatives for their inspection at the time requested or as soon as possible thereafter all documents and records relating to matters they are investigating. See Sections 3705 and 3706 of the Public Utilities Code.)

6. The constructive distance between points shown on the system of maps in the distance table may not be calculated via a road not shown on said maps. The distance table requires that the applicable constructive distance shown therein be applied between such points.

7. With the exception of the parts referred to in Finding 4, respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 8, as revised by Exhibit 12, resulting in undercharges in the total amount of \$2,919.94.

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8. The total of the undercharges set forth in Findings 4 and 7 is \$3,341.04.

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 said code in the amount of \$3,341.04 and in addition thereto should pay a fine pursuant to Section 3774 of said code in the amount of \$500.

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 respondent or his 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. Forest D. Morgan shall pay a fine of \$3,841.04 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 failing to comply with applicable documentation and other rules and regulations 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.

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 8th day of JULY, 1969.

I dissent - the fine is excessive and unduly punitive.
Fred P. Morrissey

William Seymour - J.
President
Augustus
P. P. ...
...
Commissioners