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Decision No. 76031

ORIGINAL

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 HEAVY TRANSPORT, INC., a California corporation, and BRAGG CRANE SERVICE, a California corporation.

Case No. 8909
(Filed April 22, 1969)

M. J. Bragg, Jr., for respondents.
Gary Hall, Counsel, and J. B. Hannigan,
for the Commission staff.

O P I N I O N

By its order dated April 22, 1969, the Commission instituted an investigation into the operations, rates, charges and practices of Heavy Transport Inc. (Heavy) and Bragg Crane Service (Bragg) for the purpose of determining:

1. Whether respondent Heavy has violated Section 453 of the Public Utilities Code by granting preferences or advantages to a corporation or person in that said corporation or person was charged a lesser rate by respondent Heavy than the applicable rates and charges prescribed in Western Motor Tariff Bureau's Tariff No. 6, duly published and filed with the Commission.

2. Whether respondent Heavy has violated Section 494 of the Public Utilities Code by charging, demanding, collecting, or receiving a different compensation for the transportation of property than the rates and charges due under Western Motor Tariff Bureau's Tariff No. 6, duly published and filed with the Commission.

3. Whether respondent Bragg has paid less than the applicable rates and charges prescribed in Western Motor Tariff Bureau Tariff No. 6 for transportation performed by respondent Heavy.

4. Whether respondent Heavy should be ordered to collect from respondent Bragg, named herein, or from any other person or corporation liable therefor the difference between charges actually billed or collected and charges due under Western Motor Tariff Bureau's Tariff No. 6, duly published and filed with the Commission.

5. Whether respondent Heavy should be ordered to cease and desist from any and all unlawful operations and practices.

6. Whether any of the operating authority of respondent Heavy should be cancelled, revoked, or suspended, or whether a fine should be imposed upon respondent Heavy pursuant to Section 1070 of the Public Utilities Code.

7. Whether, in the event undercharges are found to exist, a fine in the amount of such undercharges should be imposed upon respondent Heavy pursuant to Section 2100 of the Public Utilities Code.

8. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

A duly noticed public hearing was held before Examiner Rogers on June 12, 1969, in Long Beach and the matter was submitted.

Heavy has a radial highway common carrier permit, and a certificate of public convenience and necessity as a highway common carrier for the transportation of special commodities including

those which, because of their unusual size and weight, require the use of special equipment (Decision No. 67426, dated June 23, 1964, in Application No. 46630).

A Commission transportation representative testified that Heavy is a party to Local and Proportional Freight Tariff No. 6, Western Motor Tariff Bureau, Inc., Agent, and that on October 14, 15 and 16, 1968, when he investigated the matter under consideration, he observed said tariff in Heavy's (and Bragg's) office in Long Beach. Heavy's president attended the hearing herein, and did not deny said allegation. The president of Heavy is also the president of Bragg. Both respondents have the same office in Long Beach.

The specific item which is the basis of the order instituting investigation herein is Freight Bill No. 1536 (Exhibit No. 1) issued by Heavy to Bragg for the transportation of 147 loads of pre-stressed concrete girders from Norwalk to Garden Grove as a highway common carrier for \$7,173.45 during the period June 3 through June 6, 1968. According to the bill this reflected 419½ hours hauling for Bragg at \$17.10 per hour^{1/}. In the course of the transportation a subhauler's equipment was used by Heavy at \$16.05 per hour^{2/} and the subhauler was paid a total of \$1,083.38. The transportation performed by Heavy was within the central portion of its certificated area and was by means of a tractor and a dolly. Each shipment consisted of one pre-stressed concrete beam weighing 33,000 pounds. The transportation representative was told by the president of Bragg that before October 1968, there was no written agreement between Heavy and Bragg for the transportation.

^{1/} At the time the services were performed and also at the time of this decision, Heavy's tariffs did not include a rate of \$17.10.

^{2/} Heavy's lawful tariff rate for the hauling, if it had had on file a written agreement with Bragg, would have been \$16.05 per hour.

Heavy has a terminal in Long Beach. When it was being investigated in October, 1968, it had 12 drivers, five office employees and two maintenance employees. At that time it had 20 tractors and 80 trailers. During the last three quarters of 1968 its gross revenues reported to this Commission totalled \$519,085.00. For the first quarter of 1969 such revenues totalled \$168,272.00.

The transportation representative testified that on April 27, 196^{3/}2, Heavy was notified in writing that it was undercharging and in 1968 it was orally advised of undercharges.

A Commission rate expert testified that the service performed under Freight Bill No. 1536 resulted in an undercharge of \$6,350.55 (Exhibit No. 2). The rate expert stated that if Heavy had had a written agreement^{4/} with Bragg the correct rate would have been \$16.05 per hour, not \$17.10 as set out in the freight bill; that there was no written agreement between Heavy and Bragg at the time the service was performed and therefore the charges were required to be on a weight or cents per 100 pounds basis for a total lawful charge of \$13,524 or \$6,350.55 more than Heavy collected from Bragg.

^{3/} In 1962, Crail Transportation Co. owned the business. Heavy acquired the operating rights in 1964. There is nothing in the record to show that Heavy was notified of claimed illegal rates prior to 1968.

^{4/} Page 4, Paragraph C, Item 1400, 5th Revised Page 89, Western Motor Tariff Bureau, Tariff No. 6.

Respondent Heavy's secretary-treasurer testified that the carrier has made some errors in its rates and that in the past she had been the rating clerk, but during the period covered by the (Exhibit No. 1) transportation there was an office manager handling the freight bills. The witness said she did not think there was an undercharge.

Argument

Staff counsel argued that the record shows that Heavy undercharged for the transportation; that pursuant to Section 2100 of the Public Utilities Code, Heavy should be ordered to collect the amount of the undercharges from Bragg and pay a fine in the amount of the undercharges; and/or that under Section 1070 of the Public Utilities Code, Heavy should be ordered to pay a punitive fine or its certificate should be revoked or suspended.

Heavy's president argued that there is no proof that there was an undercharge, only that there was no written agreement; that Heavy collected more than the full amount which would be legally collectable if there had been a written agreement for the transportation; and that the Commission should waive the violation inasmuch as there would have been an overcharge if there had been a written agreement between Heavy and Bragg.

Findings

On the record herein we find that:

1. Heavy is a highway common carrier operating pursuant to a certificate of public convenience and necessity issued by this Commission. Heavy's certificated authority includes the transportation of pre-stressed concrete girders between Norwalk and Garden Grove in California.

2. Heavy is a party to Western Motor Tariff Bureau's Tariff No. 6. Said tariff, together with the applicable distance table, on June 3 through June 6, 1968, provided for the transportation of pre-stressed concrete girders weighing 33,000 pounds each between Garden Grove and Norwalk at the rate of \$16.05 per hour if the shipper and the carrier had executed a written agreement for the transportation. Said tariff further provided that if the shipper and the carrier had not executed a written agreement the charge for such transportation would be 23¢ per 100 pounds.

3. The transportation in issue was for-hire transportation performed by Heavy for its affiliate, Bragg.

4. During the period of June 3 through June 6, 1968, Heavy carried 147 pre-stressed concrete girders weighing 33,000 pounds each from Norwalk to Garden Grove. Heavy charged Bragg at the rate of \$17.10 per hour for this transportation which was performed over a total of 419-1/2 hours for a total charge of \$7,173.45. Heavy and Bragg had no written agreement for the transportation. The correct billing pursuant to Heavy's filed highway common carrier tariff for this service should have been for 147 pre-stressed concrete girders weighing 33,000 pounds each billed at 40,000 pounds each for a total of 5,880,000 pounds at 23¢ per 100 pounds, resulting in a total transportation charge of \$13,524.00. The incorrect

billing resulted in an undercharge of \$6,350.55. There was no reason shown by Heavy or Bragg for the assessment and payment of other than the lawful tariff rates.

Conclusions

1. Heavy has violated Section 453 of the Public Utilities Code by charging Bragg a lesser rate than the applicable rates and charges prescribed in Western Motor Tariff Bureau's Tariff No. 6.

2. Heavy has violated Section 494 of the Public Utilities Code by charging, demanding, collecting and receiving a different compensation for the transportation of pre-stressed concrete girders than the rates and charges prescribed in Western Motor Tariff Bureau's Tariff No. 6.

3. Bragg has paid less for the transportation of pre-stressed concrete girders than the applicable rates and charges prescribed in Western Motor Tariff Bureau's Tariff No. 6 for the transportation performed by Heavy.

4. Heavy should be ordered to collect from Bragg the sum of \$6,350.55 for the transportation reflected in its Freight Bill No. 1536 for transportation performed for Bragg.

5. A fine under the provision of Section 2100 of the Public Utilities Code will not be imposed. Said section requires the Commission to direct Heavy to collect the undercharges found herein and authorizes the Commission to impose upon Heavy a fine in the amount of said undercharges. The authority to fine is discretionary and based upon a review of the entire record will not be invoked. The Commission, however, will impose a fine in the amount of \$500 pursuant to Section 1070 of the Public Utilities Code.

Heavy and all similarly situated carriers are placed on notice that the fact they are affiliated with another entity does not relieve them, when dealing with their affiliated companies,

from any of the duties, obligations or responsibilities imposed upon for-hire carriers by law. The Commission, moreover, again wishes to impress upon those in the industry, who have permitted themselves to fall into a state of lethargy and indifference that they will have to comply strictly with the statutory provisions and the Commission's rules, regulations and orders. The Commission, in this respect, considers documentation the cornerstone to effective regulation.

The Commission expects that Heavy 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 Heavy and the results thereof. If there is reason to believe that Heavy or its attorney have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have not acted in good faith, or that Heavy has continued to charge less than its filed tariff rates in connection with transportation performed for its affiliated company, 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. Heavy Transport, Inc. is hereby directed to take such action as may be necessary to collect from Bragg Crane Service, a corporation, the amount of the undercharges set forth in the preceding opinion, specifically the sum of \$6,350.55; together

with any other undercharges which an examination of Heavy Transport, Inc.'s books may show, and to notify the Commission in writing upon the receipt of such collections.

2. In the event the charges to be collected as provided in paragraph 1 of this order, or any part thereof, remain uncollected thirty days after the effective date of this order, Heavy Transport, Inc. shall submit to the Commission on the first Monday of each month, a report of the undercharges remaining to be collected and specifying the action taken to collect such charges, and the result of such action, until such charges have been collected in full or until further order of the Commission.

3. Heavy Transport, 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 rates and charges prescribed in its filed tariffs.

4. Heavy Transport, Inc. shall, within forty days after the effective date of this order, pay a fine of \$500 to this Commission.

The Secretary of this Commission is directed to cause personal service of this order to be made on Heavy Transport, Inc. and Bragg Crane Service, a corporation, and this decision shall become effective as to each such corporation twenty days after the date of service thereon.

Dated at San Francisco, California, this 19th day of AUGUST, 1969.

William Lyons, Jr.
President
August
Robert Morrissey
Hubert
T. A. Ham
Commissioners