

Decision No. 76283

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion)
into the operations, rates, charges and prac-)
tices of Roy F. Querio, doing business as)
ROYAL TRUCKING CO.; GORDON H. BALL, INC., a)
corporation; O. C. JONES & SONS; ANTIOCH)
PAVING CO. and MARTIN BROS., INC., a corpor-)
ation.)

Case No. 8841

Handler, Baker & Greene by Daniel W. Baker,
for Royal Trucking Co., respondent.
Dario DeBenedictis, for Gordon H. Ball, Inc.,
respondent.
William Figg-Hoblyn, Counsel, and E. H. Hjelt, for
Commission staff.

O P I N I O N

By its order dated September 4, 1968, the Commission instituted an investigation into the rates, charges, and practices of Roy F. Querio, doing business as Royal Trucking Co., (hereinafter called Royal Trucking Co.); Gordon H. Ball, Inc., O. C. Jones & Sons; Antioch Paving Co.; and Martin Bros., Inc.

Public hearing was held before Examiner Porter on October 16, 17, and November 25, 26, 1968 at San Francisco. On the latter date the matter was submitted subject to filing of briefs. Briefs having been filed, the matter is ready for decision.

Royal Trucking Co. presently conducts operations pursuant to a radial highway common carrier permit and a highway contract carrier permit.

The other four entities named in the order instituting investigation are shippers.

Royal Trucking Co.'s operating revenue in 1967 was \$1,879,113. Roy F. Querio is sole proprietor with 5 employees, 4 hopper semitrailers, 17 sets of hopper doubles, 2 sets of transfer units and 1 terminal.

The staff presented evidence of alleged rate violation occurring on the transportation of crushed rock and pea gravel moving from commercial producing plants to freeway and road construction sites.

The staff also presented evidence as to documentation failure in not showing precise point of origin and or destination.

Evidence was produced by both the staff and respondent Royal Trucking Co. as to what was to be considered "point of origin" as set forth in Minimum Rate Tariff No. 7. This evidence was conflicting.

Discussion

To reconstruct the exact point of origin or destination or the route traveled from point of origin to point of destination is difficult and in many cases impossible after the transportation has been completed; therefore, it is incumbent upon the carrier to have this information on shipping documents so that the Public Utilities Commission staff may review these documents with a minimum of time and expense to determine if a carrier is in compliance with the minimum rates and rules of this Commission. While the matter of the technical point of origin or destination could be argued, the failure to properly prepare shipping documents renders it difficult to reconstruct the movements of the shipments.

From the evidence produced and the briefs filed it appears that that undercharges have occurred. There is substantial difference between the Commission's staff and respondent Roy F. Querio as to the exact amount of the undercharges. A controversy is the question of determining the exact point from which mileages should be calculated in order to compute the distance rates.

Minimum Rate Tariff No. 7, at the time the transportation took place, provided in Item 40 that "Distances to be used in connection with distance rates named herein shall be the actual mileages traversed, including any detour to and from scales to obtain weight of shipment." The staff argued that the mileage should be computed from the precise point of pick up, but in the absence of being able to prove the precise point at which the trucks were loaded maintain that mileage should be computed from the scales which were located inside the plants and where weights were obtained. Respondent Querio's witnesses, on the other hand, contend that according to the tariff definition of "point of origin", Item 11, all points within a single commercial producing plant shall be considered as one point of origin. Respondent Querio insisted that any ambiguity in a tariff should be resolved in favor of the shipper and that the shipments should be computed from the entrance of the commercial producing plants. There is no provision either in the definition of "POINT OF ORIGIN" or elsewhere in the tariff which establishes the entrance of the plant as the mileage basing point. Item 40 clearly states that detours from and to scales must be included in determining the mileages traversed. Obviously, no mileage so determined may be less than the mileage from the scale to the point of destination. Items 11 and 40 must be read together and when so read they establish the scales as the point of origin. The documentation failure renders determinations with respect to points of destination difficult.

Under all the circumstances involved herein the burden of ascertaining the correct rates and charges should be borne by the party who failed to comply with the appropriate document rule. The Transportation Division recommended a fine in the amount of \$5,000. The expense of reconstructing these shipments will be substantial; therefore, the Commission concludes that a fine in the amount of \$2,000 would be appropriate. The respondent Royal Trucking Co. should determine the exact amount of all undercharges on shipments, the subject of this investigation, and proceed to collect them as provided in the order which follows.

The Commission finds that:

1. Respondent Royal Trucking Co. operates pursuant to radial highway common carrier and highway contract carrier permits.
2. Respondent Royal Trucking Co. was served with the appropriate tariffs and distance tables.
3. Respondent Royal Trucking Co. charged less than the minimum rates for the transportation of property prescribed in Minimum Rate Tariff No. 7.
4. The respondent Royal Trucking Co. failed to comply with the documentation rules of Minimum Rate Tariff No. 7.
5. The scale is the point of origin and mileages are to be determined from that point.

Based upon the foregoing findings of fact, the Commission concludes that respondent Royal Trucking Co. violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine in the sum of \$2,000.

The Commission expects that when undercharges have been ascertained respondent Royal Trucking Co. will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them and to pay subhaulers. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent Royal Trucking Co. and the result thereof. If there is reason to believe that respondent Royal Trucking Co. or his attorney has not been diligent, or has not taken all reasonable measures to collect all undercharges and pay subhaulers, 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 Roy F. Querio shall examine all records available pertaining to the transportation performed for Gordon H. Ball, Inc., O. C. Jones & Sons, Antioch Paving Co. and Martin Bros., Inc. to determine all undercharges that have occurred.
2. Within ninety days after the effective date of this order, Roy F. Querio shall complete the examination of records required by paragraph 1 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.
3. Respondent Roy F. Querio shall take such action, including legal action, as may be necessary to collect the undercharges found after the examination required by paragraph 1 of this order, and shall notify the Commission in writing upon the consummation of such collections.

4. In the event undercharges ordered to be collected by paragraph 3 of this order or any part of such undercharges remain uncollected one hundred twenty days after the effective date of this order, respondent Roy F. Querio shall institute legal proceedings to effect collection and shall file with the Commission on the first Monday of each month thereafter a report of the undercharges remaining to be collected and 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.

5. Respondent Roy F. Querio shall review his records on the transportation performed for Gordon H. Ball, Inc., O. C. Jones & Sons, Antioch Paving Co. and Martin Bros., Inc. and where Roy F. Querio employed other carriers to perform the transportation, shall pay to such other carriers the difference between what was previously paid to them and 95 percent of the lawful minimum rate. Within one hundred twenty days after the effective date of this order respondent shall file with the Commission a report setting forth the subhaulers by name and the amount originally paid to each and the further amount found due to each and the action taken to make payment to the said subhaulers.

6. Respondent Roy F. Querio shall pay a fine of \$2,000 to this Commission on or before the twentieth day after the effective date of this order.

The Secretary of the Commission is directed to cause personal service of this order to be made upon the respondents. The effective date of this order shall be twenty days after the completion of such service.

Dated at Los Angeles, California, this 21st
day of OCTOBER, 1969.

William S. Jones, Jr.
President

Augustador

J. P. Sullivan

Thomas M. ...

Vernon L. ...
Commissioners