

Decision No. 76682

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 Kerner  
 Trucking Service, Inc., a California  
 corporation; Wylie F. Brown d.b.a.  
 Bachmann Bros.; Borun Bros., a  
 California corporation; Kenneth Jones,  
 Dick C. Giaimo, Mel Giaimo, Barbara  
 Lynn Giaimo, Sol Bodalementa, Norma  
 A. Warner, Clara Lampton, Robert J.  
 Brandt, Thorton Warren and Glen  
 Livingston d.b.a. Coast Crafts  
 Industries, a copartnership; Randolph  
 Rubber Co., a Massachusetts corporation  
 doing business in California; and  
 Pacific Game Co., a California  
 corporation.

Case No. 8979  
 (Filed October 15, 1969)

Donald Murchison, for Kerner Trucking  
 Service, Inc., Bachmann Bros., Coast  
 Crafts Industries, Pacific Game Co.,  
 and Borun Bros.; and Cooper, Tepper  
 & Plant by Kelly R. Davis, for  
 Randolph Rubber Co., respondents.  
Donald C. Meaney, Counsel, and J. B.  
Hannigan, for the Commission staff.

O P I N I O N

This proceeding is an investigation into the operations,  
 rates and practices of Kerner Trucking Service, Inc. (Kerner), a  
 California corporation, as carrier, and the other parties listed in  
 the heading as shippers, respondents.

Public hearings were held before Examiner Rogers in  
 Los Angeles on November 4 and 20, 1969. On this latter date the

matter was submitted. A copy of the Order Instituting Investigation and of the notice of hearing was served on each respondent in accordance with the Commission's rules of procedure.

Kerner operates pursuant to radial highway common carrier and highway contract carrier permits, and a certificate of public convenience and necessity as a highway common carrier. As a highway common carrier it transports property between points in the Los Angeles Basin Region, including Laguna Beach and Irvine.

The order of the investigation, as originally filed, includes allegations that the respondent, Kerner, may have charged and collected less than the tariff and/or minimum rates, and extended credit for a longer period than authorized by Item No. 190 (B) of Local, Joint and Proportional Freight and Express Tariff No. 111, Cal. P.U.C. No. 15 (highway common carrier operations) and Item No. 250-A, Paragraph (b) of Minimum Rate Tariff No. 2 (permitted carrier operations). It was stipulated at the hearing by counsel for Kerner and staff counsel that the above referred to tariffs had been duly served on or joined in by Kerner and that the only tariff violation which the Commission was investigating herein was whether or not Kerner had been extending credit to any or all of the remaining named respondents for a longer period than permitted by the tariffs above referred to, in violation of Public Utilities Code Sections 494, 702 and/or 3737.

The attorney for Kerner and the staff counsel stipulated that Kerner's records show 25 instances between November 4, 1968 and January 24, 1969, in which the period of credit exceeded permissible standards contained in the above specified tariff

provisions by between 5 and 35 days (Exhibit No. 1). These items are specified in Paragraph 12 on Page 4 of the Order Instituting Investigation and copies of the records of the shipments are contained in Exhibit No. 1. The shippers joined as respondents include the five companies listed in said paragraph. After said stipulation the staff rested.

Arthur Kerner, the president of Kerner, testified that he has been in the highway trucking business in California for 24 years; that prior to January, 1969, Kerner operated as a highway contract carrier and radial highway common carrier pursuant to permits from this Commission; that in 1965 he formed the respondent corporation (Kerner) and his permits and assets were transferred to it; that in January, 1969, Kerner commenced serving the Los Angeles Basin Region as a highway common carrier (Decision No. 74425 dated July 23, 1968 in Application No. 49548); that prior to January, 1969, all its service in the Los Angeles Basin Region was as a highway contract carrier; that commencing in January, 1969, all Kerner service in the Los Angeles Basin Region was pursuant to the highway common carrier certificate; that Kerner had been serving Bachmann Bros., Inc. for 12 to 15 years, Borun Bros. for 20 years, Coast Crafts Industries for 15 years, Randolph Rubber Co. for 4 years, and Pacific Game Co. for 7 years; that in March, 1966, a Commission transportation analyst, John Cox, came to Kerner's office to check his freight bills; that Cox advised him that some of the bills were overdue; that he asked Cox what to do and Cox suggested a form of a stamp to be placed on his bills to show that they were overdue (Exhibit No. 5); and that

after the visit by Cox he commenced placing the notice on overdue bills.

The witness further stated that in the latter part of 1968 and the early part of 1969 respondent's employees and the employees of the companies Kerner served had much employee absenteeism due to an influenza epidemic, and Kerner's office and its customer's got behind on all paper work; that the end of each year is the holiday season and Kerner's employees get behind on their billing; that Borun Bros. (Thrifty Drug) sends all bills to a tariff consultant to be checked and after the bills are checked by this consultant they are returned to Borun Bros. for payment; that this causes delay on payment; that Bachmann Bros. Inc. has only two men authorized to sign checks and they both leave the state for one month the end of each year; that Randolph Rubber Co. is out of business; that Pacific Game Co. and Coast Crafts Industries do the major part of their business during the holiday season and are slow in paying during said period; and that Kerner has now placed Bachmann Bros., Inc. on a cash basis. The witness stated that the late collections do not occur every year and were caused by the influenza epidemic.

The Staff counsel stated that the credit rule is difficult to observe but that the respondent has violations extending as much as 35 days beyond the allowable periods. He recommended a fine of \$200 or \$300, plus an order that Kerner cease credit violations and put non-conforming shippers on a cash on delivery basis temporarily.

Kerner's counsel admitted that there was an excessive time allowed for collection but argued that the period selected for the investigation was not representative of Kerner's operations as

it was during the holiday rush season during which there was also an influenza epidemic. He further argued that two of the companies had been placed on a collect basis by Kerner but that Borun Bros. (Thrifty) cannot pay within the credit limit time because of the transmission to the credit bureau prior to payment and that, if payment within the time is demanded, Kerner will lose the business; and that Kerner has complied with the tariff rules as much as possible.

Findings:

We find that:

1. Kerner Trucking Service, Inc. is a California corporation which was granted a certificate of public convenience and necessity by this Commission as a highway common carrier on July 23, 1968. Prior to the granting of said certificate the corporation was a permitted carrier operating under radial highway common carrier and highway contract carrier permits. During the period between November 1, 1968 and January 1, 1969, it was authorized to render service as a contract carrier or a highway common carrier, to, from and between points in the Los Angeles Basin Region.

2. Respondent, Kerner, had been served with, and at the times of the violations herein considered, had in its possession copies of Item No. 190 (B) of Local, Joint and Proportional Freight and Express Tariff No. 111 and Item No. 250-A, Paragraph (b) of Minimum Rate Tariff No. 2.

3. During said period as a highway contract carrier and/or as a radial highway common carrier, it transported commodities for respondents, Bachmann Bros., Inc.; Borun Bros.; Coast Crafts Industries; Randolph Rubber Co. and Pacific Game Co., to, from or between points within said Los Angeles Basin Region.

4. During said period Kerner transported a total of 25 shipments for the named shipper respondents and extended credit for the transportation charges after delivery for shipments Kerner transported for said named shippers for periods in excess of the time permitted by Item No. 190 (B) of Local, Joint and Proportional Freight and Express Tariff No. 111 and/or Item No. 250-A, Paragraph (b) of Minimum Rate Tariff No. 2.

5. The unlawful extensions of credit referred to in Finding No. 4 were not willful but were caused by a combination of circumstances including an influenza epidemic affecting both Kerner's and the named shippers' employees or the payment practices of some of the named shipper respondents.

6. Kerner could have refused to deliver the shipments to those who made a practice of failing to pay within the time specified by the tariff provisions listed above.

#### Conclusions

1. Kerner has violated Section 494 of the Public Utilities Code in that it has granted some shippers the privilege of extended credit beyond the period specified by Item No. 190 (B) of Local, Joint and Proportional Freight and Express Tariff No. 111.

2. Kerner has violated Section 702 of the Public Utilities Code in that it has failed to comply with Item No. 190 (B) of Local, Joint and Proportional Freight and Express Tariff No. 111.

3. Kerner has violated Section 3737 of the Public Utilities Code in that it has failed to observe and comply with the provisions of Item No. 250-A, Paragraph (b) of Minimum Rate Tariff No. 2.

4. Kerner should be ordered to cease and desist from violating the provisions of Item No. 190 (B) of Local, Joint and Proportional Freight and Express Tariff No. 111 and/or Item No. 250-A, Paragraph (b) of Minimum Rate Tariff No. 2.

5. The violations found to have occurred were not willful. A fine in the sum of \$200 will be imposed pursuant to Sections 1070 and 3774 of the Public Utilities Code. The purpose is to ensure that Kerner will comply with the provisions of the two tariffs heretofore referred to relative to credit. It is expected that in the future Kerner will collect its bills within the time required by said tariffs or will terminate credit arrangements with shippers failing to pay within said time.

O R D E R

IT IS ORDERED that:

1. Kerner Trucking Service, Inc. shall pay a fine of \$200 to this Commission on or before the fortieth day after the effective date of this order.

2. Kerner Trucking Service, Inc. shall cease and desist from extending credit to any shipper beyond the time limit prescribed in the applicable tariff.

The Secretary of this Commission is directed to cause personal service of this order to be made on Kerner Trucking Service, Inc. and each of the respondent shippers named in the order. This decision shall become effective as to each such respondent twenty days after the date of service thereon.

Dated at San Francisco, California, this 20th day of JANUARY, 1970.

William J. ...  
President

J. ...  
...  
...  
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.