

ORIGINAL

Decision No. 76807

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 GEORGE BASSI, doing business as BASSI TRANSPORTATION SERVICE: DON BROWN, doing business as DON BROWN'S TRUCKING, and AARON BERMAN, doing business as BERMAN STEEL COMPANY.

Case No. 8903
(Filed March 25, 1969)

George Bassi, in propria persona, respondent.
Gary Hall, Counsel, and E. E. Cahoon, 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 George Bassi, doing business as Bassi Transportation Service (Bassi), for the purpose of determining whether Bassi violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting less than the minimum rates and charges provided in Minimum Rate Tariff No. 2 (MRT No. 2) and failing to apply applicable surcharges prescribed in said tariff in connection with transportation performed for Aaron Berman, doing business as Berman Steel Company (Berman); by failing to comply with provisions of the multiple lot and split shipment rules in MRT No. 2 in connection with said transportation; by failing to collect transportation charges within the period specified in MRT No. 2; and by failing to pay Don Brown, doing business as Don Brown's Trucking, (Brown) 100 percent of the applicable minimum rates and charges for transportation performed for George Bassi, doing business as George Bassi Distributing Company (Bassi Distributing), in violation of the restriction in paragraph 9-A of Bassi's operating authority.

Public hearing was held before Examiner Mooney in Watsonville on June 24, 1969, on which date the matter was submitted.

Bassi operates pursuant to Radial Highway Common Carrier Permit No. 44-1342 (Exhibit 4). Said permit authorizes the transportation of general commodities and is subject to certain restrictions. The restriction with which we are concerned herein is set out in paragraph 9-A of the permit. Said paragraph states as follows:

"Whenever permittee engages other carriers for the transportation of property of George Bassi Distributing Co. or Statewide Surplus Co. or customers or suppliers of said companies, permittee shall not pay such carriers less than 100% of the applicable minimum rates and charges established by the Commission for the transportation actually performed by such other carriers."

Bassi has an office in Watsonville. He does not have a terminal. During the staff investigation referred to hereinafter, he employed four drivers and two office personnel and operated three tractors, three semitrailers and three sets of double flat rack trailers. Copies of all applicable minimum rate tariffs, distance tables and supplements and additions to each were served on Bassi. His gross operating revenues for 1968 and the first quarter of 1969 were \$39,952 and \$10,193, respectively.

On various days during the latter part of 1968, a representative of the Commission's Compliance Section visited Bassi's place of business and examined his records relating to transportation performed for Berman during the period October 1, 1967 through July 30, 1968. The commodities transported were scrap copper, scrap copper wire and cable, scrap iron, scrap aluminum, scrap lead, scrap lead cable, scrap metal and used transformers. Most of said transportation was performed by subhauliers for Bassi. The representative testified that he also visited the place of business of the three subhauliers who had performed the majority of the transportation and

reviewed their records relative thereto. He stated that he made true and correct photocopies of various freight bills and underlying documents relating to the transportation in issue and that they are all included in Exhibit 1. The witness asserted that Bassi had furnished him with information regarding the precise locations of origins and destinations, commodity descriptions, weight transported and other pertinent information which had not been clearly shown on certain of the documents in Exhibit 1. The witness pointed out that he prepared the summary in Exhibit 3 which shows that Bassi did not present freight bills to Berman for many of the shipments covered by Exhibit 1 within seven days after delivery of the freight as required by Item 250-A of MRT No. 2 and that payment for most of the transportation was received after the expiration of the credit period set forth in said item.

The representative testified that he also checked Bassi's records covering the transportation of pallets, lumber and nails for Bassi Distributing during the period April through July 1968. He stated that Bassi had engaged Brown as a purported subhauler to perform the transportation and has not paid Brown the applicable minimum rates and charges for said transportation in violation of the restriction in paragraph 9-A of his permit. The witness asserted that he made true and correct photocopies of freight bills and other documents in the files of both Bassi and Brown relating to said transportation and that the photocopies are all included in Exhibit 5. The representative testified that he personally observed the premises of Bassi Distributing at 836 Walker Street, Watsonville and determined that said location is not served by rail facilities.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibits 1 and 5, together with the supplemental information testified to by the representative, and formulated the rate statements in Exhibits 2 (Berman) and 6 (Bassi Distributing), respectively. Exhibit 2 shows the rate and charge assessed by Bassi for the transportation he performed for Berman, the rate and charge computed by the staff and the alleged undercharge for the transportation covered by each part of Exhibit 1. Exhibit 6 shows the amount paid by Bassi to Brown for the transportation of property of Bassi Distributing performed by Brown as a purported subhauler for Bassi, the rate and charge computed by the staff and the alleged balance due Brown for the transportation covered by each part of Exhibit 5. The total amount of the alleged undercharges shown in Exhibit 2 (Berman) is \$7,154.23. The total amount alleged to be due Brown shown in Exhibit 6 (Bassi Distributing) is \$663.41.

The representative and rate expert testified that the rate errors by Bassi shown in Exhibit 2 (Berman) resulted from assessing incorrect highway carrier and alternative common carrier rail rates, failing to assess surcharges provided in MRT No. 2 and consolidating separate shipments as single multiple lot, split pickup or delivery shipments without complying with the applicable rules in said tariff. The witnesses pointed out that many of the shipments included in Exhibit 2 (Berman) involved the transportation of transformers. The representative testified that he was informed by an employee of Pacific Gas and Electric Company from whose plants most of said shipments originated that the transformers had not been dismantled and that only the oil had been drained from them. The rate expert explained that he had rated the transformers as "Transformers, used,

C. 8903 Mjo

having value only for reconditioning or for salvage of parts" as provided in Item 63400 of National Motor Freight Classification A-9 (NMFC A-9).

Mr. Bassi testified that he is the sole owner of both Bassi and Bassi Distributing; that both companies are located at the same address; that his primary business is Bassi Distributing which manufactures pallets, fruit bins and car bracing. With respect to the transformer shipments in Exhibit 2 (Berman), he stated that all of the transformers were junk and should be rated as such; that they were hauled to dismantling yards where they were dismantled, and the metal was sold to smelters; that the price paid by the buyer for said transformers was approximately 80 percent less than the price paid for usable "used" transformers; that Berman bought the transformers based on the rates quoted to him for the transportation; that most likely Berman's profit on the transformers did not equal the amount of the undercharges alleged by the staff on said shipments; that several loads of the transformers were transported on low-bed equipment because of the weight and size of the transformers; that there are no minimum rates for the transportation of commodities which because of abnormal size or weight must be transported on low-bed trailers; that he is unable to determine which of the shipments included in the investigation herein were handled on this type equipment and had failed to mention this to the staff representative; that he had transported transformers for Berman for many years and had not taken this transportation away from any other carrier. The witness stated that the drivers had put the wrong commodity description on the shipping documents for several of the other shipments in Exhibit 2 (Berman). As to the shipments which he had consolidated

as multiple lot, split pickup or delivery shipments, Mr. Bassi explained that Mr. Berman is in the junk business and buys from all over the State; that verbal orders for transportation are received from Mr. Berman by telephone; that he is instructed to pick up the freight as soon as possible; and that there is not sufficient time to obtain written instructions from Mr. Berman prior to pickup. He asserted that in his opinion, all hauling he performed for Berman was junk; that he has lost the Berman account and that Berman has obtained his own equipment and is now performing all of his own transportation.

As to the transportation of the property of Bassi Distributing performed by Brown as a purported subhauler for Bassi, Mr. Bassi testified as follows: He had not looked at his permit for a number of years and was not aware of the restriction in paragraph 9-A thereof regarding such transportation; Brown and Bassi loaned equipment back and forth to help each other out; Brown furnished the driver and gas with the equipment; Bassi furnished the equipment only; when Bassi loaned the equipment, no documents were prepared to cover this, but when Brown loaned the equipment a delivery ticket was prepared so Brown could be paid for the driver and gas; possibly the shipments included in Exhibit 6 (Bassi Distributing) were transported on equipment loaned to Bassi by Brown; he leases a vacant lot one block from his premises; said lot is served by rail facilities, and he stores lumber there when his yard is full.

Mr. Bassi testified that most of the hauling he performed was exempt transportation not subject to minimum rates; that he is not too familiar with the Commission's minimum rate tariffs; that he did all of his own rating during the period covered by the staff investigation and was of the opinion that all rates he had charged Berman for the transportation covered by Exhibit 2 and all amounts

he had paid Brown for the transportation covered by Exhibit 6 were correct; and that although the volume of transportation he presently handles is negligible, he has retained a traffic consultant to do all of his rating to assure that no errors occur in the future.

An undercharge letter was sent to Bassi by the Commission staff on October 19, 1965. Said letter pointed out to Bassi that he had incorrectly rated shipments of transformers for Berman, and directed him to review his records and collect the undercharges on said shipments.

Discussion

We concur with the staff ratings shown in Exhibits 2 (Berman) and 6 (Bassi Distributing).

As to the shipments of transformers in Exhibit 2 (Berman), the staff, as pointed out above, has rated them as used transformers having value only for reconditioning or salvage of parts as provided in Item 63400 of NMFC A-9. We agree. The majority of said shipments were picked up at Pacific Gas and Electric Company stations in northern California. Of the shipments picked up at said stations, most were delivered to an electrical equipment company in southern California, and the remainder were delivered to Berman's yard in Watsonville. The balance of the shipments were all picked up at Berman's Watsonville yard and delivered to said electrical equipment company. Based on the pattern of the shipments, it can reasonably be inferred that the transformers were either reconditioned or the parts were salvaged. However, even assuming, arguendo, that the transformers were for dismantling and the metal was to be sold as junk to smelters, there is no rating in NMFC A-9 for junk transformers. In this connection, it is a general rule that if a particular commodity

is not specifically described in the applicable classification, the rating provided in said classification for the most closely analogous commodity will be used. (See Rule 370, NMFC A-9.) Here, the commodity transported was used transformers and must be rated as such. The most closely analogous commodity description in the classification for used transformers for dismantling and selling the parts to smelters would be that provided in said Item 63400.

With respect to Mr. Bassi's statement that several loads of transformers were transported on low-bed equipment, he readily admitted that he did not know which shipments might have been moved in this manner. There is nothing in the evidence to clarify this statement. None of the documents in Exhibit 1 relating to the transformer shipments show that low-bed equipment was used. The weight of the evidence clearly supports the staff ratings shown in Exhibit 2 (Berman) for the transformer shipments.

As pointed out by the staff rate expert, Bassi had combined and rated as multiple lot, split pickup or split delivery shipments a number of separate shipments for Berman which the staff had rated individually. In each instance, the consignor had not issued written instructions for such service prior to or at the time of the first pickup as required by the applicable tariff rules. (See Items 85, 160 and 170 of MRT No. 2.) Said rules further provide that when the required written instructions have not been so issued, each component part of the consolidated shipment must be rated separately. Mr. Bassi stated that verbal instructions had been received from Mr. Berman by telephone. In this connection, we have consistently held that verbal instructions are not a satisfactory substitute for the required written instructions. Furthermore,

many of the individual pickups were made beyond the time limit in said rules.

The statement of Mr. Bassi that the drivers may have inserted incorrect commodity descriptions on the documents for several of the shipments transported for Berman is opinion testimony. This is not sufficient to overcome the documentary evidence of record regarding said shipments.

The restriction in paragraph 9-A of Bassi's permit requires Bassi to pay Brown 100 percent of the applicable minimum rates and charges for the transportation of the property of Bassi Distributing as a purported subhauler for Bassi. This, Bassi did not do in connection with the transportation covered by Exhibit 6 (Bassi Distributing). Even had there been no such restriction in Bassi's operating authority, the evidence herein supports a finding that since both Bassi and Bassi Distributing are owned and operated by Mr. Bassi, the separate identity of both companies should be disregarded for the purposes of this proceeding, and any ostensible subhauler, in this case Brown, transporting the property of Bassi Distributing should be paid the full minimum rates and charges for such transportation. As stated by Mr. Bassi, Brown and Bassi loaned equipment back and forth at times, and possibly the shipments included in Exhibit 6 (Bassi Distributing) were transported on equipment borrowed by Bassi from Brown. The documents in Exhibit 5 do not support the statement. Said documents clearly show that Brown was engaged by Bassi as a purported subhauler. Furthermore, Mr. Bassi stated to the staff representative during his investigation that he engaged Brown to subhaul the transportation covered by Exhibit 6 (Bassi Distributing).

There is nothing in the record which demonstrates with any degree of certainty that the lumber shipments in Exhibit 6 (Bassi Distributing) did not in fact have either their origin or destination at the location of Bassi Distributing at 836 Walker Street, Watsonville, which is not a railhead location. We are mindful of the assertion by Mr. Bassi that he rents a yard one block away which is served by rail facilities and that some of said shipments might have been delivered there. However, Mr. Bassi was unable to designate which, if any, of the shipments were delivered there. We are concerned here with evidence and not speculation.

Based on a review of the evidence, we are of the opinion that Bassi should be directed to collect the undercharges found herein in connection with transportation performed for Berman; that a fine in the amount of said undercharges should be imposed on Bassi; that Bassi should be directed to pay Brown the difference between 100 percent of the applicable minimum rates and charges and the amount heretofore paid Brown as a purported subhauler of shipments for Bassi Distributing; and that, in addition, a punitive fine in the amount of \$500 should be imposed on Bassi.

Findings and Conclusions

The Commission finds that:

1. Bassi operates pursuant to Radial Highway Common Carrier Permit No. 44-1342.
2. Bassi was served with applicable minimum rate tariffs, distance tables and supplements and additions to each.
3. The transformers included in various shipments in Exhibit 2 (Berman) were correctly rated by the staff as used transformers having value only for reconditioning or salvage of parts.

4. The evidence does not establish with any degree of certainty whatsoever which, if any, of the transformer shipments in Exhibit 2 (Berman) might have been delivered on low bed equipment.

5. The requirements in the applicable rules in MRT No. 2 that written instructions be furnished by the consignor to the carrier prior to or at the time of initial pickup are conditions precedent to consolidating separate shipments as multiple lot, split pickup or split delivery shipments. Said requirements were not complied with in connection with the transportation in Exhibit 2 (Berman) which Bassi had rated in this manner.

6. The permit authority held by Bassi includes in paragraph 9-A thereof the restriction quoted hereinabove which provides that other carriers engaged by Bassi to transport property for or on behalf of Bassi Distributing shall not be paid less than 100 percent of the applicable minimum rates and charges for such transportation.

7. Bassi and Bassi Distributing are both owned and operated by Mr. Bassi. The services of the purported subhaulers when engaged by Bassi to transport the property of Bassi Distributing are in reality those of a prime carrier, and in such instances, Bassi is acting in his capacity as a shipper.

8. Bassi Distributing's location at 836 Walker Street, Watsonville is not a railhead location.

9. It has not been established herein that any particular lumber shipment in Exhibit 6 (Bassi Distributing) was in fact delivered to a location other than the one described in Finding 8.

10. The staff ratings shown in Exhibits 2 (Berman) and 6 (Bassi Distributing) are correct.

11. Bassi charged less than the prescribed minimum rates in the instances set forth in Exhibit 2 (Berman), resulting in undercharges in the total amount of \$7,154.23.

12. Bassi hired Brown to transport shipments of Bassi Distributing and paid Brown less than 100 percent of the applicable minimum rates and charges for said transportation in the instances set forth in Exhibit 6 (Bassi Distributing), resulting in underpayments to Brown in the total amount of \$663.41.

13. In certain instances, Bassi did not present freight bills to Berman within the time specified in Item 250-A of MRT No. 2 or receive payment from Berman within the credit period set forth in said item.

The Commission concludes that Bassi violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of said code in the amount of \$7,154.23, and in addition thereto should pay a fine pursuant to Section 3774 thereof in the amount of \$500.

The Commission expects that Bassi will promptly pay the underpayments set forth in Exhibit 6 (Bassi Distributing), and that Bassi will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges shown in Exhibit 2 (Berman). The staff of the Commission will make a subsequent field investigation into the measures taken by Bassi and the results thereof. If there is reason to believe that all underpayments have not been paid or that either Bassi 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 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. George Bassi, doing business as Bassi Transportation Service, shall pay a fine of \$7,654.23 to this Commission on or before the fortieth day after the effective date of this order.
2. Said respondent shall pay underpayments in the amount of \$663.41 to Don Brown, doing business as Don Brown's Trucking, and shall notify the Commission in writing when said underpayments have been paid in full.
3. Said 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.
4. Said respondent shall promptly pay the underpayments and shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and in the event underpayments ordered to be paid by paragraph 2 or undercharges ordered to be collected by paragraph 3 of this order, or any part of such underpayments or undercharges, remain unpaid or uncollected sixty days after the effective date of this order, said respondent shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the underpayments remaining to be paid and the undercharges remaining to be collected, specifying the action taken to pay such underpayments and to collect such undercharges and the result of such action, until such underpayments have been paid in full and such undercharges have been collected in full or until further order of the Commission.

5. Said respondent shall cease and desist from violating any rules established by the Commission 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 respondents. The effective date of this order, as to each respondent, shall be twenty days after the completion of such service on such respondent.

Dated at San Francisco, California, this 17th day of FEBRUARY, 1970.

William J. Lyons, Jr.
President

August
J. Wilson

James L. Stinson
Commissioners