

ORIGINAL

Decision No. 77252

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates, and practices of WILLIS L.)
CARR and CHARLES D. WEIST, indi-)
viduals, doing business as CATES)
CARR GO, and ZONOLITE DIVISION;)
W. R. GRACE AND CO.)

Case No. 9032
(Filed March 17, 1970)

Charles D. Weist and Willis L. Carr, for
Cates Carr Go, and Kenneth L. Roberts,
for W. R. Grace & Co., respondents.
William Figg-Hoblyn, 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 Willis L. Carr and Charles D. Weist, individuals, doing business as Cates Carr Go (Carr and Weist), for the purpose of determining whether said respondents 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 and by failing to comply with applicable documentation and unit of measurement rules in Items 255 and 257 of said tariff in connection with transportation performed for Zonolite Division, W. R. Grace and Co., a corporation (Zonolite).

Public hearing was held before Examiner Mooney in Los Angeles on April 7, 1970, on which date the matter was submitted.

Carr and Weist operate pursuant to radial highway common carrier and highway contract carrier permits. They have a terminal in Cypress. During the staff investigation referred to hereinafter, they employed 11 drivers and three office employees, operated 14

tractors and 24 trailers and had copies of all applicable tariffs, classifications and distance tables, together with all supplements and additions to each. Their gross operating revenue for 1969 was \$390,316.

On November 3, 4 and 25, 1969, a representative of the Commission's Compliance Section visited the place of business of Carr and Weist and examined their records relating to 126 shipments transported for Zonolite during the period May through October, 1969. The commodity transported was plastic boards, blocks or panels, honeycomb cellular construction, expanded, as described in Item 24400, subs 2 and 6 of National Motor Freight Classification A-10. The representative testified that he made true and correct photostatic copies of the freight bills for 99 of the shipments and that said copies are all included in Exhibit 1. He pointed out that with the exception of one shipment, no weight was shown on the documents and that a flat charge was assessed for each of the 99 shipments. The witness stated that he contacted Zonolite and reviewed its bills of lading relating to the shipments in issue; that the bill of lading for each shipment showed the cubic volume of the commodity transported; that he obtained a brochure from said respondent which described the commodity and stated the weight to be approximately one pound per cubic foot (Exhibit 2); and that he was informed by the warehouse supervisor of weighing and shipping that the commodity was manufactured to weigh one pound per cubic foot and any variance from this would be minor. The representative testified that with this information, he was able to determine the weight of each of the 99 shipments. As to the balance of the 126 shipments, he explained that there was not sufficient information available to determine the applicable minimum rate and charge for any of them. He stated that

both the carrier and shipper respondents informed him that none of the shipments were power loaded by the consignor or power unloaded by the consignee.

A transportation analyst for the Commission staff testified that he took the set of documents in Exhibit 1, together with the supplemental information testified to by the representative, and formulated Exhibit 3 which shows the flat charge assessed by Carr and Weist, the minimum rate and charge computed by the staff and the alleged undercharge for each of the 99 shipments. The witness pointed out that the documents in Exhibit 1 did not show the weight of the shipments as required by Item 255 of Minimum Rate Tariff No. 2 and that respondent carrier based charges on an agreed flat amount per shipment rather than the unit of measurement provided in the tariff as required by Item 257 thereof. He stated that the total amount of the undercharges shown in Exhibit 3 was \$2,536.15.

Mr. Weist and Mr. Carr testified as follows: All shipments in Exhibit 3, with the exception of several return shipments, were delivered from Zonolite's plant in South Gate to a company in Huntington Beach or to a company in Santa Ana; Zonolite sold to said companies at a delivered price, and to do this, it was necessary that it have a firm price for the transportation; in accordance with Zonolite's request, they furnished it with a fixed charge that would apply to deliveries to either customer; the fixed charge substantially exceeded the hourly charge in Section 5 of Minimum Rate Tariff No. 5 that would be applicable to deliveries to either destination; they were aware that said tariff requires a written agreement executed by the shipper and carrier as a condition precedent to the use of the hourly rates therein; there was no such agreement in effect during the period of time involved herein.

Mr. Weist and the traffic manager of the Construction Products Division of W. R. Grace and Co. of which Zonolite is a part testified as follows regarding the written agreement to use hourly rates. During the period covered by the staff investigation, Zonolite was going through a transition in management and personnel; the business had been purchased by W. R. Grace and Co. from Stauffer Chemical Co. immediately prior thereto; the reason the shipper did not execute an hourly agreement during the transition was due to confusion as to which personnel was authorized to sign contracts; there have been written agreements to use hourly rates in effect for all transportation prior and subsequent to the period reviewed; there was never any intent by either respondent to violate any of the minimum rate regulations.

We concur with the staff ratings and resulting undercharges shown in Exhibit 3.

As to the assertion by respondents that the rates assessed exceeded the applicable hourly rates in Section 5 of Minimum Rate Tariff No. 5, they candidly admitted that there was no written agreement to use such rates in effect during the time in question nor was there any actual equipment use time kept pursuant to the requirements of Note 2 of Item 420 of said tariff. The rule on page 36 of Minimum Rate Tariff No. 5 states that the hourly rates in Section 5 apply only when, prior to the transportation of the property, the shipper enters into a written agreement with the carrier to use such rates. Paragraph (c) of Item 400 on page 37 of the tariff provides that no single agreement shall cover shipments transported over a period in excess of 31 days. Since there was no agreement in effect when the transportation listed in Exhibit 3 moved, hourly rates could not be used, and said transportation was subject to the Minimum Rate Tariff

No. 2 distance rates shown in the staff rate exhibit. Furthermore, the fact that Zonolite was involved in a reorganization does not excuse failure to comply with applicable tariff provisions. In the circumstances, we need not consider, nor could we in fact calculate, whether the flat charge exceeded the minimum hourly charge for any of the transportation herein.

Based on a review of the entire record, we are of the opinion that Carr and Weist should be directed to collect the undercharges shown in Exhibit 3 and pay a fine in the amount thereof, and that, in addition thereto, a punitive fine in the amount of \$250 should be imposed on said respondents.

The Commission finds that:

1. Carr and Weist operate pursuant to radial highway common carrier and highway contract carrier permits.
2. Carr and Weist were served with all applicable minimum rate tariffs, distance tables and supplements and additions to each.
3. The rule on page 36 of Minimum Rate Tariff No. 5 provides that the hourly rates in Section 5 of the tariff apply only when, prior to the transportation of the property, the shipper enters into a written agreement with the carrier to use said rates. There was no such agreement in effect for any of the transportation included in Exhibit 3.
4. With the exception of one document, Carr and Weist did not show the weight transported on any of the documents in Exhibit 1 as required by Item 255 of Minimum Rate Tariff No. 2, and they did not comply with the unit of measurement provisions of Item 257 of said tariff in connection with any of the transportation included in the staff exhibits.

5. Carr and Weist charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 3, resulting in undercharges in the total amount of \$2,536.15.

The Commission concludes that Carr and Weist 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 \$2,536.15, and in addition thereto should pay a fine pursuant to Section 3774 thereof in the amount of \$250.

The Commission expects that Carr and Weist 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 said respondents and the results thereof. If there is reason to believe that either said respondents or their attorney have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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. Willis L. Carr and Charles D. Weist, individuals, doing business as Cates Carr Co, shall pay a fine of \$2,786.15 to this Commission on or before the fortieth day after the effective date of this order.

2. Said respondents 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. Said respondents 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, said respondents 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. Said respondents shall cease and desist from violating applicable tariff rules 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 22nd day of May, 1970.

William Squaw
President
Augustin
Rubenstein
Thomas R. Sturgeon
Commissioners