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ORIGINAL

Decision No. 77655

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SIGNAL TRUCKING SERVICE, a corpora-
tion, for authority to depart from
minimum rates, rules and regulations
in connection with certain transpor-
tation to be performed for SEARS,
ROEBUCK & CO.

Application No. 51932
(Filed June 1, 1970;
Amended July 30, 1970)

OPINION AND ORDER

Minimum Rate Tariff 15 (MRT 15) names yearly, monthly and weekly vehicle unit rates for the transportation of property by highway carriers. The vehicle unit rates set forth therein apply when the shipper enters into a written agreement with the carrier. When such agreement is executed, the minimum rates otherwise applicable do not apply.

Signal Trucking Service, Ltd. (Signal), operating as a highway permit carrier, has for many years contracted with Sears, Roebuck & Company, at Los Angeles, for the transportation of property under the provisions of MRT 15. Such written agreements were effective during the month of April, 1970 and continuously thereafter up to and including August 31, 1970. Applicant's written agreements with Sears, Roebuck & Co. include the services of several units of carrier's motor vehicle equipment (8 two-axle trucks, 46 tractors and 213 trailers) with drivers for transportation between points served by Signal as a permitted carrier.

During the month of April, 1970 there were intermittent periods when Signal experienced work stoppages caused by teamster driver strikes in the immediate Los Angeles area. When such

A. 51932 hjh

intermittent work stoppages occurred, Signal was unable to furnish drivers to operate its motor vehicular equipment assigned for the exclusive use of Sears, Roebuck & Co. Consequently, the shipper was unable to make use of the motor vehicular equipment it had contracted for with applicant during such periods of work stoppages. It is understood that Sears, Roebuck & Co., under the terms of its written agreements with Signal, compensated the carrier on the basis of the monthly vehicle unit rates contained in MRT 15, even though the transportation services paid for by said shipper were not performed by Signal whenever its equipment was inactivated by intermittent strikes.

In Exhibit A of Application No. 51932, as amended, Signal has demonstrated that the historical total driver cost per month, underlying the established MRT 15 monthly vehicle unit rates involved herein, is predicated upon a total driver cost of \$5.583 per hour for 168 hours per month of work performed. Signal explains that certain cost elements included in the total driver cost of \$5.583 per hour were incurred regardless of the fact that its drivers did not work during the April, 1970 intermittent work stoppages. Signal also agrees that certain other direct labor-related cost elements included in the \$5.583 per hour driver cost factor were not actually experienced during the work stoppages in question. Such labor cost elements, amounting to approximately \$4.41 per hour, are the base labor rate of \$4.21 per hour plus \$0.196 per hour for Workmen's Compensation Insurance.

In Exhibit B of the application, Signal has determined the number of hours less than 168 hours per month each unit of equipment leased to Sears, Roebuck & Co. was inactivated, between

A. 51932 hjh

April 1, 1970 to and including April 17, 1970, because of intermittent strikes by Signal's drivers. A total of 3,664 hours of non-productive driver hours is indicated in Exhibit B. Signal now requests authority to refund to Sears, Roebuck & Co. the sum of \$4.41 for each of the 168 contract hours per month Signal was unable to provide drivers to operate its equipment on lease to Sears, Roebuck & Co. because of the intermittent teamster strikes. The total amount of refund for 3,664 non-productive driver hours, at \$4.41 per hour, amounts to \$16,158.24. Said refund would return to Sears, Roebuck & Co. that portion of the direct labor-related cost elements included in the MRT 15 vehicle unit rates paid to, but not incurred by, Signal during the periods of work stoppages in April, 1970.

Minimum Rate Tariff 15 does not provide for the waiver or remission of all or part of the yearly, monthly or weekly vehicle unit rates published therein when the service, to be performed under the required written agreement, has been interrupted or prematurely terminated by either the shipper or carrier. In Decision No. 67659, dated August 4, 1964, in Case No. 7783, Petition for Modification No. 1, (Unreported) the Commission considered the publication of a rule in MRT 15 to govern the apportionment of charges for services which have been terminated. In declining to publish such a tariff rule, the Commission stated, in part, as follows:

"...The need for a rule to govern such situations is speculative. The record shows that none of the rules proposed... would meet all of the possible circumstances under which service could be interrupted or terminated...In the circumstances where an inequitable situation may result from interruption or termination of a written agreement beyond the control of the parties to the agreement, relief from the tariff provisions may be sought from the Commission through the filing of formal pleadings appropriate to the circumstances."

(See Decision No. 71192, dated August 23, 1966, in Application No. 48546; and Decision No. 73606, dated January 9, 1968, in Case No. 8661.)

The instant application involves an intermittent interruption of a written agreement for service by the carrier due to work stoppages caused by striking teamster drivers. Signal submits that such work stoppages were unauthorized under its effective labor contracts with the local teamster union. Applicant contends that it expended every effort to provide drivers for its equipment under lease to Sears, Roebuck & Co. in accordance with its MRT 15 contractual agreement. Since Signal was unable to furnish the necessary drivers to perform its agreement with Sears, Roebuck & Co. during periods of work stoppages and did not sustain all of the driver labor costs during such periods, it is requested that an ex parte order be issued granting Signal the authority to make appropriate refund to the shipper for the unexpended driver labor involved. Signal maintains that its contracts for service with Sears, Roebuck & Co., under the provisions of MRT 15, for the past several years have been compensatory.

In consideration of the specific circumstances involved in this application, the Commission finds that:

A. 51932 hjh

1. Signal Trucking Service, Ltd., operating as a permitted carrier, has for several years contracted with Sears, Roebuck & Co., at Los Angeles, for the transportation of property under the vehicle unit rate provisions of Minimum Rate Tariff 15. Such written agreements for service involved herein are for the period of April 1, 1970 to and including April 17, 1970.

2. Applicant's transportation services for the account of Sears, Roebuck & Co., under the provisions of Minimum Rate Tariff 15, have been compensatory over the period of years of the outstanding written agreements.

3. During the period of April 1, 1970 to and including April 17, 1970, Signal experienced work stoppages caused by striking union teamster drivers in the immediate Los Angeles area. When such intermittent work stoppages occurred, Signal was unable to furnish drivers to operate its motor vehicle equipment assigned to Sears, Roebuck & Co. under written agreements as provided in Minimum Rate Tariff 15.

4. Applicant carrier received compensation from Sears, Roebuck & Co. on the basis of the full vehicle unit rates for the transportation services set forth in the written agreements, even though such services were not available to the shipper at intermittent periods due to work stoppages sustained by applicant.

5. The application shows that the historical total driver cost underlying the monthly vehicle unit rates named in MRT 15 for various types and combinations of vehicle units is predicated upon an hourly driver cost of \$5.583 for 168 hours per month.

A. 51932 hjh

6. Applicant did not experience certain direct labor-related cost elements, included in the total hourly driver cost factor of \$5.583, when it failed to furnish drivers to operate equipment leased to Sears, Roebuck & Co. under effective MRT 15 written agreements.

7. The direct labor-related cost elements included in the total driver cost factor of \$5.583 per hour, underlying MRT 15 monthly vehicle unit rates involved herein but not actually experienced by applicant during the April, 1970 work stoppages, amounts to \$4.41 per hour. Said amount includes the base driver labor rate of \$4.21 plus \$0.196 per hour for Workmen's Compensation Insurance.

8. Applicant's motor vehicle equipment leased to Sears, Roebuck & Co. was inactivated during the April, 1970 intermittent strikes for a total of 3,664 hours less than the 168 hours per month per unit of equipment reflected in the MRT 15 vehicle unit rates.

9. To the extent Signal would retain that portion of the compensation it received from Sears, Roebuck & Co. to cover the direct labor related cost of \$4.41 per hour for each of the 3,664 non-productive driver hours set forth in Finding 8 hereof, an inequitable situation would obtain within the meaning of Decision No. 67659.

10. Signal Trucking Service, Ltd. should be authorized, under Section 3667 of the Public Utilities Code, to remit and Sears, Roebuck & Co. relieved of the burden of paying the sum of \$4.41 for each of the 3,664 contract hours applicant was unable to provide drivers to operate its leased equipment due to the April, 1970 teamster driver work stoppages. The resulting refund of \$16,158.24 has been shown to be fully justified.

A. 51932 hjh

The Commission concludes that Application No. 51932, as amended, should be granted. A public hearing is not necessary.

IT IS ORDERED that:

1. Signal Trucking Service, Ltd., is hereby authorized to remit to Sears, Roebuck & Co. a sum of \$4.41 for each of the 3,664 contract hours (168 hours per month per unit of equipment) applicant was unable to provide drivers to operate equipment on lease to Sears, Roebuck & Co. due to teamster driver strikes during the period April 1, 1970 to and including April 17, 1970. The amount of refund resulting under the order herein shall not exceed a sum of \$16,158.24.

2. The authority herein granted shall expire unless exercised within thirty days after the effective date of this order.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 25th
day of AUGUST, 1970.

[Signature]
Chairman
[Signature]
William J. Sweeney
[Signature]
Vernon L. Sturgeon
Commissioners