

Decision No. 77786**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the investigation)
 into the rates, rules, regulations,)
 charges, allowances, and practices)
 of all household goods carriers,)
 common carriers, highway carriers,)
 and city carriers, relating to the)
 transportation of used household)
 goods and related property.

Case No. 5330
 Pet. for Mod. #44
 (Filed November 10, 1969)

And Related Matters.

Case No. 5432
 Pet. for Mod. #563
 Case No. 5433
 Pet. for Mod. #30
 Case No. 5435
 Pet. for Mod. #136
 Case No. 5438
 Pet. for Mod. #74
 Case No. 5439
 Pet. for Mod. #105
 Case No. 5441
 Pet. for Mod. #179
 Case No. 5603
 Pet. for Mod. #76
 Case No. 5604
 Pet. for Mod. #20
 Case No. 6008
 Pet. for Mod. #11
 Case No. 7857
 Pet. for Mod. #26
 Case No. 8808
 Pet. for Mod. #5

(Appearances are listed in Appendix A.)

O P I N I O N

By these petitions, the California Trucking Association seeks amendment of the various minimum rate tariffs by adding to the provisions permitting the alternative application of common carrier rates a rule providing for an additional charge of one cent per 100 pounds whenever such rail rates are used.

Public hearings were initially held on March 12 and 13 and April 6, 1970, at San Francisco before Commissioner Sturgeon and Examiner Turpen. At the start of the initial hearing, the counsel for the Commission staff made a motion that the petitions be dismissed as the proposed rule would result in a violation of Section 3663 of the Public Utilities Code. Counsel for the California Manufacturers Association joined in the motion.

Following receipt of petitioner's direct evidence at the March hearings and testimony from witnesses of the California railroads in support of the petitions in the April hearing, it was decided to hear oral argument on the motion to dismiss and not to receive further evidence on the petitions until a ruling on the motion was made by the Commission.

Oral argument on the motion to dismiss was held on July 20, 1970, at San Francisco before Commissioner Sturgeon and Examiner Turpen. The motion was submitted July 29, 1970, upon the filing of the transcript.

The present Section 3663 of the Public Utilities Code was originally enacted by the Legislature in 1935 as part of Section 10 of the Highway Carriers' Act. Section 3663 reads as follows:

"3663. In the event the commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points. (Part of former Sec. 10.)"

As a result of this requirement of Section 3663, the various minimum rate tariffs contain provisions generally as follows:

"Common carrier rates, except those of coastwise common carriers by vessel, may be applied in lieu of the rates provided in this tariff, when such common carrier rates produce a lower aggregate charge for the same transportation than results from the application of the rates herein provided."^{1/}

Over the years certain additional charges have been provided for, under certain conditions, when loading or unloading is performed by the highway carrier, as such is not a service performed by and included in the rate of the rail carrier.

Petitioner's proposal herein is to add a new item to the various minimum rate tariffs reading as follows:

APPLICATION OF ADDITIONAL CHARGES WHEN
APPLYING RATES OF COMMON CARRIERS BY RAILROAD

In addition to all other charges accruing under applicable provisions of this tariff, a charge of one cent per 100 pounds shall be assessed against the total shipment weight upon which transportation charges are computed on all shipments moving at alternatively applied rates of a common carrier railroad.

1/ "Same Transportation" is defined in the tariff as follows:

SAME TRANSPORTATION means transportation of the same kind and quantity of property between the same points, and subject to the same limitations, conditions and privileges, but not necessarily in an identical type of equipment.

Petitioner's theory, as developed in its direct testimony, without cross-examination, appears largely to be that truck service provides a number of savings to shippers over rail service and thus should be at a higher rate. It is not necessary at this time to go into greater detail about these allegations, but mentioned are such things as time of transit, quick availability of trucks versus rail cars, necessity of cleaning rail cars, etc.

It should be noted that Section 3663 states very definitely that minimum rates established by the Commission may not exceed rates of common carriers by land for "the transportation of the same kind of property between the same points". This says nothing about service conditions being equal, about packaging requirements being the same, or any differences in the type of service offered. It is clear that the previously authorized additional charges for loading and unloading, under certain specified conditions, are for services definitely not included in the rail rates, but the charge herein proposed in the petitions is for indefinite "added values of services", which would result in the minimum rates for the "transportation of the same kind of property between the same points" exceeding that of the rail lines, which under the provisions of Section 3663 cannot be considered as being within the requirements of Section 3663. It is thus obvious that adoption of petitioner's proposal would result in a violation of Section 3663 of the Public Utilities Code. It should be noted that a similar conclusion was reached in Decision No. 35212, in Case No. 4246, dated March 31, 1942, (44 CRC 108). The governing Code provisions have not changed since then. The opinion of the Commission as determined at that time should be reaffirmed.

The Commission finds that:

1. Section 3663 of the Public Utilities Code requires that rates set as minimum rates by the Commission for highway permit carriers be no higher than those of common carriers by land for the transportation of the same kind of property between the same points.

2. To require higher rates or charges than the rail rates to be assessed for the transportation of the same kind of property between the same points would violate the provisions of Section 3663.

We therefore conclude that the motion to dismiss the petitions should be granted.

O R D E R

IT IS ORDERED that the petitions listed in the title hereof, filed by the California Trucking Association on November 10, 1969, are hereby dismissed.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 6th day of OCTOBER, 1970.

J. Baldwin
Chairman
Augusta
William J. ...
...
Vernon L. ...
Commissioners

APPENDIX A

Appearances

- Richard W. Smith, H. F. Kollmyer and A. D. Poe, for California Trucking Association, petitioner.
- Joseph L. Lemon and Frederick Pfrommer, for the California Railroads, in support of petitioner.
- T. R. Dwyer, J. McSweeney, Robert C. Ellis, W. N. Greenham, M. L. Frost, Armand Karp, Joseph E. MacDonald, John Odoxta, and Lee Pfister, for various highway carriers, respondents.
- D. D. Cole, Noel Dyer, John Reed, Robert A. Evans, B. R. Garcia, Ron Graham, William D. Grindrod, Ralph E. Hallock, Vernon L. Hampton, G. R. Hubbard, Milton C. Jacobson, J. D. Kain, Meyer L. Kapler, W. R. Kinnard, C. R. Looney, J. H. LeCompte, D. H. Marken, William D. Mayer, R. A. Morin, Phillip S. Rogers, Joseph F. Ross, James R. Steele, Charles R. Taft, Wayne R. Tinker, Milton A. Walker, Ronald M. Zaller, A. I. Taylor, John G. Mammes and George E. Hassenfritz, for various shippers and organizations, protestants.
- Richard Austin, Asa Button, Charles H. Caterino, Donald M. Enos, John J. Wynne, Ralph Hubbard, John C. Jessup, William M. Larimore, Gordon Larsen, Karl L. Mallard, M. J. Nicolaus, Loren D. Olsen, E. O. Pate, Frank Reyher, Darryl L. Ritsch, James L. Roney, James Towne and Ronald M. Zaller, for various shippers and organizations, interested parties.
- Elmer Sjostrom and Harold J. McCarthy, for the Commission staff.