

ORIGINAL

Decision No. 77844

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 )  
 SMITH TRANSPORTATION CO., a Cali- )  
 fornia corporation, and BECK- )  
 DISCO, INC., a California corpo- )  
 ration. )

Case No. 9081  
 (Filed June 16, 1970)

Donald Murchison, Esquire, for Smith  
 Transportation Co., respondent.  
Elmer Sjostrom, 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 Smith Transportation Co., a California corporation (Smith), for the purpose of determining whether said respondent violated Sections 494 and 3667 of the Public Utilities Code by unlawfully consolidating shipments and providing accessorial rating service not authorized by applicable tariffs in connection with transportation performed for Beck-Disco, Inc., a California corporation (Disco).

Public hearing was held before Examiner Mooney in Santa Maria on August 6, 1970, on which date the matter was submitted.

Smith operates pursuant to highway common carrier certificates and radial highway common carrier and highway contract carrier permits. It has terminals in Santa Maria, Vernon, Oxnard, Santa Barbara and San Luis Obispo. According to its 1969 Annual Report to the Commission, it operates 92 tractors, 169 semitrailers and 33 trucks. During the time of the staff investigation referred to

hereinafter, it had nine administrative and 175 other employees. Smith was served with Minimum Rate Tariff No. 2 and Distance Table No. 7, together with all supplements and additions to each, and is a party to Western Motor Tariff Bureau Tariff No. 111. Its gross operating revenue for the year ending June 30, 1970 was \$3,779,728.

On various days during May, June, July and November 1969, a representative of the Commission's Compliance Section visited Smith's terminals in Vernon, Oxnard and Santa Maria and examined its records relating to the transportation of household appliances, radios, TV sets, records, tables, paint, suitcases, vinyl tile, hand tools, toys and related items for Disco during the period June, July and August 1969. The representative testified that he made true and correct photostatic copies of freight bills and supporting documents for certain transportation during the review period which Smith had rated as split pickup shipments without the required written instructions from Disco to rate the transportation in this manner and that all of said copies are included in Exhibits 1 and 2. He stated that he was informed by the traffic manager at Smith's Los Angeles terminal that he rated the transportation for Disco; that at the end of each day, he would assemble the bills of lading for each pickup for Disco and would rate them both as separate shipments and as a single split pickup shipment; and that if the total charge for the day were less by rating all of the individual pickups as a split pickup shipment, he would prepare a master document and bill the transportation accordingly. The witness testified that the office manager at Smith's general office in Santa Maria informed him that Smith had several years ago received a letter from Disco which included written instructions to consolidate all individual pickups for Disco for a particular store during a single

day as a split pickup shipment; that said letter had been misplaced or lost; and that no other written instructions had been received from Disco. The representative explained that another representative who had made a prior investigation of Smith's operations confirmed the fact that he had seen the general instructions referred to by the office manager. The witness asserted, however, that such general written instructions are not authorized by the applicable tariff rules which require separate written instructions from the shipper for each split pickup shipment.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibits 1 and 2, together with the supplemental information testified to by the representative, and formulated Exhibit 8 which shows the rates and charges assessed by Smith, the rates and charges computed by the staff and the undercharges alleged by the staff for the transportation included in Exhibits 1 and 2. He pointed out that the split pickup rules in the applicable tariffs require that written instructions be issued by the shipper to the carrier prior to or at the time of the initial pickup and that said instructions show, in addition to other information, the kind and quantity of freight in each pickup. He explained that said rules further provide that if the required type of written instructions are not issued in conformity therewith, each pickup shall be rated as a separate shipment, and that since said instructions had not been issued for the transportation in issue, he rated each pickup as a separate shipment. The rate expert testified that in addition to the failure to have proper written instructions, Smith had, in certain instances, improperly consolidated pickups within its certificated area with those beyond said area. He stated that the basing point for rating purposes for the destination shown on numerous documents in Exhibits 1 and 2 as

6865 Hollister, Goleta, is in fact Ellwood, and Smith so stipulated. The total amount of the undercharges shown in Exhibit 8 is \$1,450.06.

The president of Smith was placed on notice by the staff at a conference on September 8, 1966, for alleged rate violations in connection with transportation for Disco (Exhibit 4).

The traffic manager for Smith testified as follows: His office is at the Los Angeles terminal; he is responsible for all rating and billing and for all tariff participation; Smith's Profit and Loss Statement for December 1969 shows a profit for the year of \$101,810.04 before taxes but a loss of \$79,993.89 for the month (Exhibit 9), and the statement for June 1970 shows a loss of \$948.07 for the first six months with an operating ratio of 100.06 percent for said period (Exhibit 10); the company's financial position is not good; the 240, more or less, freight bills included in the staff exhibits account for only a minute portion of the total of approximately 63,000 intrastate freight bills issued by Smith during the three-month period reviewed; he was of the opinion the method he used to rate the shipments in the staff exhibits was correct; he was not present at and was never informed by Smith's president of the conference with the staff on September 8, 1966; it was never his intent to violate any tariff regulations; a balance due billing was sent to Disco on August 5, 1970, for the undercharges shown in the staff rate exhibit (No. 12); shipments now transported for Disco are not consolidated as split pickup shipments.

We concur with the staff that standing or continuing written instructions which, according to the evidence, had been issued by Disco to Smith for any and all future transportation do not conform with the provisions of the applicable split pickup rules which require that the written instructions show, among other

things, the kind and quantity of property in each component part of the split pickup shipment. This information was lacking. Furthermore, individual documents received by a carrier at the time of each pickup do not satisfy this requirement. Said rules require that the information be furnished to the carrier prior to or at the time of the initial pickup. We agree with the staff ratings shown in Exhibit 8.

Based on a review of the evidence, we are of the opinion that Smith should be directed to collect the undercharges found herein and pay a fine in the amount thereof, and that in addition thereto, a punitive fine in the amount of \$500 should be imposed on said respondent.

The Commission finds that:

1. Smith operates pursuant to highway common carrier certificates and radial highway common carrier and highway contract carrier permits.
2. Smith was served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each, and is a party to all applicable common carrier tariffs.
3. Smith charged less than the lawfully prescribed minimum or common carrier rates in the instances set forth in Exhibit 8 resulting in undercharges in the total amount of \$1,450.06.
4. Smith has billed Disco for all of the undercharges shown in Exhibit 8.
5. Smith provided, without charge, a rating service for Disco.

The Commission concludes that Smith violated Sections 494 and 3667 of the Public Utilities Code and should pay a fine pursuant to Sections 2100 and 3800 of said code in the amount of \$1,450.06,

and in addition thereto should pay a fine pursuant to Sections 1070 and 3774 thereof in the amount of \$500.

The Commission expects that Smith 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 respondent and the results thereof. If there is reason to believe that either said respondent or its 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 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. Smith Transportation Co., a California corporation, shall pay a fine of \$1,950.06 to this Commission on or before the fortieth day after the effective date of this order.
2. 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.
3. Said respondent 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 respondent 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 respondent 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 applicable rates and charges.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Smith Transportation Co. The effective date of this order, as to this respondent, shall be twenty days after completion of personal service. The Secretary is further directed to cause service by mail of this order to be made upon Beck-Disco, Inc., and the effective date of this order, as to said respondent, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 20<sup>th</sup> day of OCTOBER, 1970.

[Signature]  
Chairman

William J. [Signature]

[Signature]  
Commissioners

-7- Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.