

Decision No. 77858**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of ROMEO FAENZI and JOE AMARAL,
Partners, Doing Business as
ROMEO'S DELIVERY & DRAYAGE, for
authority to depart from the
minimum rates, rules and regula-
tions in Minimum Rate Tariff No.
15 in connection with certain
transportation service rendered.

Application No. 52029
(Filed July 10, 1970; Amended
September 28, 1970)

O P I N I O N

In this application, Romeo Faenzi and Joe Amaral, doing business as Romeo's Delivery & Drayage (applicants) seek authority as a highway permit carrier to refund to Ball Distributing Co. (Ball) a portion of the charges assessed for the month of May, 1970 for transportation performed under yearly vehicle unit rates set forth in Minimum Rate Tariff No. 15. During the period in question, applicants' operations were intermittently interrupted by a strike of their Teamster union employees.

The application, as amended, seeks to make refund to Ball in the same manner as Signal Trucking Service was authorized to refund transportation charges to Sears Roebuck & Company, pursuant to Decision No. 77655, dated August 25, 1970, in Application No. 51932. The instant application indicates that the situation giving rise to the request for refund corresponds to that described in Decision No. 77655, and that applicants seek relief similar to that granted therein to Signal.

The application and amendment were served in accordance with Commission rules and notice of said filings appeared on the Commission's Daily Calendar. There are no protests. California Trucking Association has no objection to the relief sought.

The Commission finds:

1. Applicants, operating as a highway permit carrier, have contracted with Ball Distributing Co., at San Francisco, for the transportation of property under the vehicle unit rate provisions of Minimum Rate Tariff No. 15. Such written agreement for service involved herein covers the period of May 1, 1970 to and including May 18, 1970.

2. During the period of May 1, 1970 to and including May 18, 1970, applicants experienced work stoppages caused by striking union teamster drivers in the San Francisco area. When such intermittent work stoppages occurred, applicants were unable to furnish a driver to operate the motor vehicle equipment assigned to Ball, under the written agreement as provided in Minimum Rate Tariff No. 15.

3. Applicants received compensation from Ball on the basis of the full vehicle unit rates for the transportation services set forth in the written agreement, even though such services were not available to the shipper at intermittent periods due to work stoppages sustained by applicants.

4. The direct labor-related cost elements included in the total driver cost factor underlying MRT 15 yearly vehicle unit rates involved herein but not actually experienced by applicants during the May 1970 work stoppages, amounts to \$4.33 per hour. Said amount includes the base driver labor rate of \$4.135 per hour plus \$0.192 per hour for Workmen's Compensation Insurance.

5. Applicants' motor vehicle equipment leased to Ball was inactivated during the May 1970 intermittent strikes for a total of 24 hours less than the 168 hours per month per unit of equipment reflected in the MRT 15 vehicle unit rates.

6. To the extent applicants would retain that portion of the compensation they received from Ball to cover the direct labor cost of \$4.33 per hour for each of the 24 nonproductive driver hours set forth in Finding 5 hereof, an inequitable situation would obtain within the meaning of Decision No. 67659, dated August 4, 1964, in Case No. 7783, Petition No. 1 (Unreported).

7. Romeo's Delivery & Drayage should be authorized, under Section 3667 of the Public Utilities Code, to remit and Ball Distributing Co. relieved of the burden of paying the sum of \$4.33 for each of the 24 contract hours applicants were unable to provide drivers to operate the leased equipment due to the May, 1970 teamster driver work stoppages. The resulting refund of \$103.92 has been shown to be fully justified.

The Commission concludes that Application No. 52029, as amended, should be granted to the extent indicated by the above findings. A public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. Romeo Faenzi and Joe Amaral, doing business as Romeo's Delivery & Drayage, are hereby authorized to remit to Ball Distributing Co. a sum of \$4.33 for each of the 24 contract hours applicants were unable to provide a driver to operate equipment leased to Ball Distributing Co. due to teamster driver strikes

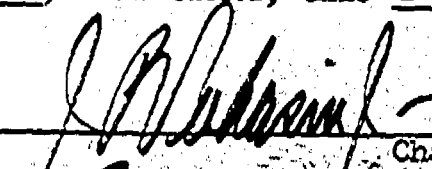

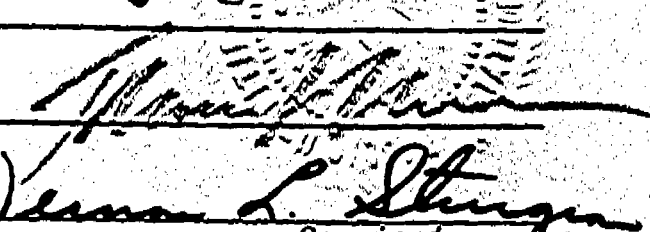
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during the period May 1, 1970 to and including May 18, 1970. The amount of refund resulting under the order herein shall not exceed a sum of \$103.92.

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 ten days after the date hercof.

Dated at San Francisco, California, this 27th day of OCTOBER, 1970.


Chairman


Commissioner

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.