

JR

Decision No. 77864

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
BORREGO FREIGHT LINES, INC., a )  
Corporation, for authority to depart )  
from the rates, rules and regulations )  
of Minimum Rate Tariff No. 15, under )  
the provisions of City Carriers' Act )  
and of the Highway Carriers' Act. )

Application No. 52023  
(Filed July 8, 1970;  
Amended October 5, 1970)

O P I N I O N

In this application, Borrego Freight Lines, Inc. (Borrego), seeks authority as a highway permit carrier to refund to Sears, Roebuck & Company (Sears), a portion of the charges assessed for the month of April 1970, for transportation performed under vehicle unit rates set forth in Minimum Rate Tariff No. 15. During the period in question, applicant's operations were intermittently interrupted by a strike of its Teamster union employees.

The application, as amended, seeks to make refund to Sears in the same manner as Signal Trucking Service was authorized to refund transportation charges to Sears 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 is identical to that described in Decision No. 77655, and that Borrego seeks similar relief to that granted therein.

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. Borrego Freight Lines, Inc., operating as a highway permit carrier, has for several years contracted with Sears, Roebuck & Co. for the transportation of property under the vehicle unit rate provisions of Minimum Rate Tariff No. 15. Such written agreements for service involved herein cover the month of April 1970.

2. During the period of April 1, 1970 to and including April 17, 1970, Borrego experienced work stoppages caused by striking union teamster drivers. When such intermittent work stoppages occurred, Borrego 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 No. 15.

3. Applicant 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.

4. The direct labor-related cost elements included in the total driver cost factor 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.

5. Applicant's motor vehicle equipment leased to Sears, Roebuck & Co. was inactivated during the April 1970 intermittent strikes for a total of 208 hours less than the 168 hours per month per unit of equipment reflected in the MRT 15 vehicle unit rates.

6. To the extent Borrego 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 208 non-productive 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. Borrego Freight Lines, Inc. 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 208 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 \$917.28 has been shown to be fully justified.

The Commission concludes that Application No. 52023, as amended, should be granted. A public hearing is not necessary.

O R D E R


IT IS ORDERED that:

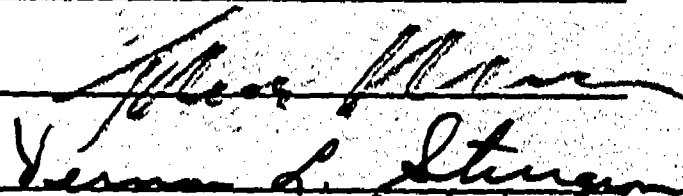
1. Borrego Freight Lines, Inc. is hereby authorized to remit to Sears, Roebuck & Co. a sum of \$4.41 for each of the 208 contract hours (168 hours per month per unit of equipment) applicant was unable to provide drivers to operate equipment on lease to Sears, Roebuck & Co. due to teamster driver strikes during the month of April 1970. The amount of refund resulting under the order herein shall not exceed a sum of \$917.28.

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 hereof.

Dated at San Francisco, California, this 27<sup>th</sup> day of OCTOBER, 1970.

  
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Chairman

  
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Commissioner's

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