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Decision No. 77902

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Herbert A. Rocklitz and Wayne H.)
Rocklitz, dba DOUBLE R TRANSPORT,)
for relief from the provisions of)
Item 170 of Minimum Rate Tariff)
No. 2 for the account of National)
Biscuit Co.)

Application No. 52067

(Filed July 24, 1970)

Wayne H. Rocklitz, for applicant.
Arthur D. Maruna, H. F. Kolkwyer,
and Arlo D. Poe, for California
Trucking Association, interested
party.
B. I. Shoda, for the Commission's
staff.

INTERIM OPINION

Herbert A. Rocklitz and Wayne H. Rocklitz, copartners doing business as Double R Transport, are engaged in the business of transporting property under authority of a permit authorizing operations as a highway contract carrier. They seek relief from provisions of Item 170, Minimum Rate Tariff 2 (MRT 2), which limit the number of individual deliveries that may be made in connection with the transportation of shipments accorded split delivery service. They also seek relief from certain charges which apply under said item when the number of individual deliveries exceed specified maxima.

Public hearing on the application was held before Examiner Abernathy at San Francisco on September 17, 1970.

Evidence was presented by Wayne H. Rocklitz. Representatives of the California Trucking Association and of the Commission's staff participated in the development of the record. Prior to the close of hearing applicant's witness requested opportunity to amend the application in various aspects, and to submit evidence on the amendments at a further hearing to be held as soon as practicable. He also asked that the requested relief from the provisions of Item 170, MRT 2, be granted as a temporary measure pending the further hearing and decision thereon.

According to the evidence which was presented by the witness, applicant has been transporting bakery goods pursuant to a contract with National Biscuit Company for a number of years. Two truckloads per week are transported from National Biscuit Company's plant at Emeryville to various of the company's customers along Highway 101, or in the vicinity thereof, northward from Laytonville to the Oregon border. Each load is tendered to applicant as a split delivery shipment. One shipment weighs about 7,500 pounds; the other about 8,500 pounds. The individual deliveries range from about 50 to 700 pounds. The transportation of one load involves about 35 to 40 individual deliveries; the other involves as many as 56.

The rates and charges which applicant has been assessing under its contract with National Biscuit Company have been about 10 percent higher than those which applied as minimum prior to May 9, 1970, when the limitations and charges of Item 170, MRT 2, became applicable. Since May 9, 1970, applicant's charges for split delivery service have also included the charges imposed by Item 170.

Assertedly, applicant's services for National Biscuit Company, under the rates and charges which prevailed prior to May 9, 1970, were profitable. Financial operating results of said services for the year 1969 were reported as follows:

Revenues	\$30,782
Expenses	<u>24,666</u>
Net Operating Revenues	\$ 6,116
Operating Ratio	80.1%

Note: During 1969 National Biscuit Company's operations were interrupted by strike for about six weeks. In the development of the foregoing figures, the data covering the actual operations were annualized to approximate the year's operating results had there been no strike.

Since 1969 applicant's rates and charges under its contract have been increased to reflect increases which have been made in minimum rates. Applicant predicts that if it is authorized to deviate from the provisions of Item 170 as herein sought, and otherwise to assess the rates and charges under its contract, its operations would continue to be satisfactorily profitable. Assuming that such rates and charges have been assessed, and would be assessed throughout 1970, and giving effect to increases in wage costs and other costs which have been experienced or are expected, applicant estimated that its earnings for the year would be those represented by an operating ratio of 84.8 percent.^{1/}

^{1/} Applicant's expense estimates for 1970 do not include an allowance for salary of either of the partners, whereas the figures for 1969 do. Adjustment of the 1970 figures correspondingly would result in an operating ratio of 90.2 percent.

On the other hand, applicant asserts that it is confronted with the probable loss of these earnings if the sought relief from Item 170 is not granted. Applicant's experience during the period from May 9, 1970, through July 31, 1970, shows that applicant's revenues (and the costs of applicant's services to National Biscuit Company) were increased by \$2,064, an increase of about 27 percent, as a result of applying the provisions of Item 170. As a consequence of this increase in the costs of using applicant's services, National Biscuit Company reportedly is considering the use of transportation facilities of its own to perform the transportation involved. It appears that the company is now performing its own deliveries in the area from Emeryville to Laytonville and is in a position to extend its services further if impelled to do so.

The charges and limitations which are imposed upon split delivery service by Item 170 of MRT 2 were first established pursuant to Decision No. 77026, dated March 31, 1970, in Case No. 5432. According to said decision, changes in shippers' marketing and traffic patterns since 1954, when the rules applicable to split delivery service were last broadly reviewed, have resulted in a substantial increase in the number of split delivery shipments tendered to for-hire carriers. A consequence has been an increase in the number of components and the mileage traversed per shipment with a resulting increase in the carriers' costs of performing the transportation involved. As an alternative to a general increase in the rates and charges for split delivery service to meet the increased costs thereof, the provisions of Item 170 were established as a step toward confining the shippers' demands for split

delivery service to limits reasonably commensurate with the carriers' costs of performing said service. This action was taken as an interim measure pending the receipt of additional evidence on the matters involved. The present provisions of Item 170 carry an expiration date of June 1, 1971.

As applied to the specific transportation in issue herein, it appears that the general objectives of Item 170, namely the assuring of compensatory revenues for the services performed, are met by applicant's present contractual arrangements with National Biscuit Company. In the circumstances it appears that applicant should be relieved from the requirement of complying with the provisions of said item. This conclusion assumes that applicant will continue to assess rates and charges which are not less than those which apply under its present contract with National Biscuit Company. The authority which is hereinafter granted should be conditioned accordingly.

The record indicates that applicant's method of assessing charges for its services for National Biscuit Company may involve departures from the minimum rate provisions which are in addition to those under consideration herein. For example, it appears that applicant's charges for the line haul portions of its services are computed, in effect, on a zone basis instead of on the mileage basis specified in MRT 2. Applicant should further analyze its rates, charges and services in relation to the minimum rate requirements, and should either make such adjustments therein as necessary to bring them into conformity with said requirements or should obtain appropriate authorization therefor. Applicant's

request for opportunity to amend this application and to submit further evidence thereon should be granted. Meanwhile, applicant should be authorized to deviate, temporarily and to the extent heretofore stated, from the provisions of Item 170.

The representatives of the California Trucking Association and of the Commission's staff both concurred in applicant's request for further hearing on this matter and the issuance of temporary authority pending further consideration on the application and any amendments thereto.

Findings

1. Applicant is engaged in the transportation of bakery goods for National Biscuit Company from Emeryville to various destinations along or in the vicinity of Highway No. 101 from, and including, Laytonville to the Oregon border.
2. Said bakery goods are shipped in loads of about 7,500 to 8,500 pounds and move in split delivery service to separate destinations ranging in number from about 35 to 56 per load.
3. Said transportation is being performed pursuant to contract with National Biscuit Company at rates and charges which are about 10 percent higher than the applicable minimum rates and charges in Minimum Rate Tariff 2 (with the exception of those named in Item 170 of said tariff).
4. As of May 9, 1970, Minimum Rate Tariff 2 was amended by the inclusion of provisions in Item 170 limiting the number of individual deliveries that may be made in split delivery service and imposing additional charges for deliveries exceeding specified maxima.

5. The revision in applicant's charges in compliance with Item 170 of Minimum Rate Tariff 2 resulted in an increase of about 27 percent in the total costs to National Biscuit Company of having its shipments transported by applicant.

6. As a consequence of the increase in charges pursuant to Item 170, applicant is confronted with a probable cancellation of its contract with National Biscuit Company and a loss of the revenues received for the services it performs under said contract.

7. The revenues which applicant receives under its contract with National Biscuit Company (exclusive of revenues received pursuant to Item 170) are sufficient to return applicant's costs of service plus a profit.

8. The rates and charges which applicant assesses pursuant to its contract with National Biscuit Company are reasonable as to total revenues thereunder for the services to which they apply.

Conclusions

1. Subject to further order of the Commission upon review of evidence to be presented by applicant at a later hearing on the matters involved in this proceeding, including other respects by which applicant may seek authority to deviate from the minimum rates applicable to the transportation of bakery goods which applicant performs for National Biscuit Company, applicant should be relieved from the requirements of paragraph B of Item 170, MRT 2, in connection with said transportation, and should be authorized to perform said transportation at rates and charges otherwise in effect as of September 17, 1970, pursuant to applicant's contract with National Biscuit Company relative to said transportation.

2. The authority herein granted should expire six months after the effective date of the order which follows unless sooner canceled, changed or extended by order of the Commission.

INTERIM ORDER

IT IS ORDERED that:

1. Subject to the conditions set forth in Paragraph 2 below, Herbert A. Rocklitz and Wayne H. Rocklitz, doing business as Double R Transport, are hereby relieved from the requirements of paragraph B of Item 170 of Minimum Rate Tariff 2 in connection with the transportation of bakery goods which they perform for National Biscuit Company.

2. In the exercise of the relief granted by Paragraph 1, Herbert A. Rocklitz and Wayne H. Rocklitz shall assess rates and charges for the transportation which they perform for National Biscuit Company which are not lower in volume or effect than the rates and charges (other than those specified in said paragraph B of Item 170) which they were assessing as of September 17, 1970, pursuant to their contract with National Biscuit Company.

3. The relief herein granted shall expire six months after the effective date of this order unless sooner canceled, modified or extended by order of the Commission.

4. A further public hearing shall be scheduled on this application as it may be subsequently amended.

The effective date of this order shall be ten days after the date hereof.

Dated at San Francisco, California,
this 4th day of NOVEMBER, 1970.

[Signature]
Chairman
[Signature]
William J. [Signature]
[Signature]
Vernon L. Sturgeon
Commissioner