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ORIGINAL

Decision No. 77941

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates and)
practices of TRANS-OCEAN ENTERPRISES,)
a California corporation, and)
HARRIS TUBE, a division of AUTOMATION)
INDUSTRIES, INC., a California)
corporation.)

Case No. 9048
(Filed April 14, 1970)

Gordon W. Nelson, for Trans-Ocean Enterprises
and Harris Tube, respondents.
Glenn D. Taylor, Counsel, and E. E. Cahoon,
for the Commission staff.

O P I N I O N

By its order dated April 14, 1970, the Commission instituted an investigation into the operations, rates, charges, and practices of Trans-Ocean Enterprises (Trans-Ocean) and Harris Tube, a division of Automation Industries, Inc. (Harris).

Public hearing was held before Examiner O'Leary on June 17 and 18, 1970 at San Francisco. The matter was submitted upon receipt of the Staff's answer to respondents' Closing Arguments and Memorandum of Points and Authorities on July 17, 1970.

Decision No. 74218 dated June 7, 1968 in Case No. 8769, ordered Trans-Ocean to pay a fine of \$500 and suspension of Trans-Ocean's radial highway common carrier, city carrier and household goods carrier permits until further order of the Commission. The effective date of said decision was stayed until July 6, 1969 (Decisions Nos. 74456 and 75815). Trans-Ocean's permits were under suspension from July 6, 1969 until September 3, 1969 at which time that portion of Decision No. 74218, which ordered the suspension of permits, was rescinded by Decision No. 76109.

A transportation representative from the Commission's staff testified that on August 1, 1969 he observed three of Trans-Ocean's trucks loaded with sheet steel. Interviews with the drivers disclosed that the shipments originated at U.S. Steel, Pittsburg, and were destined to Harris. A traffic manager for U. S. Steel testified that U.S. Steel had engaged Trans-Ocean to perform the transportation. Exhibit 5 contains photocopies of shipping documents and cancelled checks relating to the loaded trucks observed by the transportation representative and other shipments transported during the time Trans-Ocean's permits were under suspension.

The transportation representative also testified that appropriate tariffs were mailed to Trans-Ocean. He further testified that he examined Trans-Ocean's records for the period July 1, 1968 to June 30, 1969. The underlying documents relating to 38 shipments were taken from Trans-Ocean's files, photocopied and forwarded to the Rate Analysis Unit. The copies of said shipping documents comprise Exhibits 2, 3 and 4.

The transportation representative also testified that his examination disclosed that Trans-Ocean had employed subhaulers without having a bond on file as required by General Order No. 102-C. The representative testified that the required bond was cancelled on January 10, 1968. Exhibit 6 contains photocopies of shipping documents and subhaul agreements which show that Trans-Ocean engaged L & B Trucking as a subhauler on 15 occasions between January 12, 1968 and March 13, 1968. The exhibit discloses that the total agreed consideration was \$2,705.00. Exhibit 6 also discloses that Trans-Ocean employed Allen Trucking Co. as a subhauler on 10 occasions between March 28, 1968 and April 15, 1968. The agreed consideration for the 10 occasions was \$1,500.00.

One of the owners of L & B Trucking testified that he had not received any payment from Trans-Ocean for the subhauling covered by the documents contained in Exhibit 6 and that the total owed to his company by Trans-Ocean was approximately \$3,500.00. The vice president of Specialized Transport testified that Specialized Transport was the successor to Allen Truck Service and that Allen Truck Service had performed subhauling services during March, April and May 1968 for an agreed compensation of \$3,740.00; of that amount they received \$2,327.20 less fees they paid to the collection agency hired to collect the \$3,740.00.

A rate expert from the Commission staff testified that he had taken the documents comprising Exhibits 2, 3 and 4 and prepared Exhibit No. 8. Said exhibit reveals undercharges totaling \$1,010.55. The undercharges allegedly result from the assessment of improper rates because of the miscalculation of mileage, the transportation of portions of split delivery shipments prior to the issuance of written instructions for split delivery shipments as required by Item 170 of Minimum Rate Tariff No. 2 and the consolidation of shipments which is prohibited by Item 60 of Minimum Rate Tariff No. 2.

Respondents presented no direct evidence. After the staff presentation, counsel for respondents requested a continuance to consult experts and more adequately prepare their defense. Said request was denied. The request was renewed in "Respondents Closing Arguments and Memorandum of Points and Authorities" filed July 6, 1970 wherein it is stated "a continuance was particularly justified by the confused testimony of the witness SILVIUS who admitted repeated errors in Exhibit A and in his testimony."

No Exhibit A was received in evidence; we must assume respondents are referring to Exhibit 8 which was sponsored by witness Silvius. Five corrections to Exhibit 8 were made by the witness as follows: Part 1 the undercharge was reduced by one cent due to arithmetical error; Part 2 was stricken from the exhibit; Parts 9 and 28, one of the references to Appendix A was changed, said changes did not affect the witness's opinion of the minimum rate and charge; Part 26 the undercharge was reduced by \$22.00. The changes made by the witness resulted in the same or a lesser undercharge than originally shown in the exhibit. A copy of the exhibit, without the corrections, was mailed to the respondent Trans-Ocean on April 28, 1970.

Respondents claim that "The denial of this reasonable request was an abuse of discretion" (emphasis supplied). Trans-Ocean requests the proceeding be reopened. Since respondent Trans-Ocean was furnished a copy of Exhibit 8 well in advance of the hearing, it had adequate time to prepare its defense prior to the hearing on June 17 and 18, 1970. The request was not reasonable nor was the denial of the request an abuse of discretion. The request to reopen the proceeding will be denied.

Respondents concede that the uncontroverted evidence is that the operating rights of respondent Trans-Ocean were suspended by Decision No. 74218 (ordering paragraph 2). On September 3, 1969, the Commission issued Decision No. 76109 which ordered that ordering paragraph 2 of Decision No. 74218 is hereby rescinded. Respondent Trans-Ocean contends that the word rescinded conveys a retroactive meaning implying null and void from the beginning. Respondent's contention is without merit. A reading of Decision No. 76109 (attached hereto as Appendix A) in its entirety discloses it was the Commission's intention to reinstate Trans-Ocean after it had allowed its records and carrier facilities to be inspected.

The other contentions raised by respondents are without merit and will not be discussed herein.

Based upon the evidence adduced, the Commission finds that:

1. Ordering paragraph 2 of Decision No. 74218, dated June 7, 1968 in Case No. 8769, suspended the radial highway common carrier, city carrier and household goods carrier permits issued to respondent Trans-Ocean.

2. The effective date of Decision No. 74218 was July 6, 1969.

3. Decision No. 76109 dated September 3, 1969, rescinded ordering paragraph 2 of Decision No. 74218.

4. Decision No. 76109 did not render null and void the entire suspension but rather reinstated the suspended permits effective September 3, 1969.

5. Respondent Trans-Ocean performed transportation for compensation during the period its permits were under suspension.

6. During the period January 12, 1968 to April 15, 1968, respondent Trans-Ocean employed subhaulers without having a bond on file as required by General Order No. 102-C.

7. Respondent Trans-Ocean was served with appropriate tariffs and distance tables.

8. Respondent Trans-Ocean transported portions of split delivery shipments prior to receipt of written instructions as required by Item 170 of Minimum Rate Tariff No. 2 in the instances set forth in Parts 1, 3, 4 and 6 of Exhibit 2.

9. Respondent Trans-Ocean charged less than the prescribed minimum rates in the amounts set forth in Exhibit 8 which resulted in undercharges in the amount of \$1,010.55.

10. The denial of the request for a continuance was not an abuse of discretion.

The Commission concludes that Trans-Ocean violated Sections 3664, 3667, 3737, and 3775 of the Public Utilities Code and should be ordered to collect the undercharges, should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,010.55 and in addition thereto should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$5,000.00.

The Commission expects that Trans-Ocean Enterprises 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 Trans-Ocean Enterprises and the results thereof. If there is reason to believe that Trans-Ocean Enterprises 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. The request to reopen the proceeding is denied.
2. All motions not previously ruled on are hereby denied.
3. Respondent Trans-Ocean Enterprises shall pay a fine of \$6,010.55 to this Commission on or before the fortieth day after the effective date of this order.

4. Respondent Trans-Ocean Enterprises 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.

5. Respondent Trans-Ocean Enterprises 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 4 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondents 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.

6. Respondent Trans-Ocean Enterprises shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

7. Respondent Trans-Ocean Enterprises shall cease and desist from engaging subhauliers in violation of the requirements of General Order No. 102-C.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Trans-Ocean Enterprises. The effective date of this order shall be twenty days after completion of personal service. The Secretary is further

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directed to cause service by mail of this order to be made upon
all other respondents.

Dated at San Francisco, California, this 10th
day of NOVEMBER, 1970.

Chairman
[Signature]

William J. Vukasin, Jr.

[Signature]

Yusuf L. Sturgis
Commissioners

Commissioner J. P. Vukasin, Jr., being
necessarily absent, did not participate
in the disposition of this proceeding.

Appendix A

Decision No. 76109

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)
TRANS OCEAN ENTERPRISES, a)
corporation.)

Case No. 8769

SUPPLEMENTAL ORDER

Decision No. 74218 found, among other things, that:

"4. An authorized employee of the Commission delegated to perform an inspection of respondent has been denied access to its lands, buildings, equipment, accounts and memoranda." and concluded, among other things, "... its permits should be suspended until such time as the Commission or its authorized employees are allowed to inspect its records and carrier facilities." Paragraph 2 of the Order in Decision No. 74218 suspended respondent's permits.

Respondent recently having allowed an authorized employee of the Commission to inspect its records and carrier facilities,

IT IS ORDERED that:

1. Ordering paragraph 2 of Decision No. 74218 is hereby rescinded.
2. In all other respects Decision No. 74218 shall remain in full force and effect.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 3rd day of September, 1969.

WILLIAM SYMONS, JR.
President

A. W. GATOV

J. P. VUKASIN, JR.

THOMAS MORAN
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.