

Decision No. 78040

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Transport Cartage and Distributing)
 Co. for authority to refund unearned)
 freight charges under Sections 451,)
 494 and 734 of the Public Utilities)
 Code.)

Application No. 51937
 (Filed June 4, 1970;
 Amended October 9, 1970)

OPINION AND ORDER

Transport Cartage and Distributing Co. (Transport Cartage), a Delaware corporation, is authorized to operate as a highway common carrier of general commodities in California. The yearly vehicle unit rate provisions established by Transport Cartage are set forth in Items 200 and 500 of Western Motor Tariff Bureau's Local Freight Tariff No. 113, Cal. P.U.C. No. 19. Said tariff provisions are responsive to the governing provisions contained in the Commission's Minimum Rate Tariff 15 (MRT 15). The published yearly vehicle unit rates of Transport Cartage and the corresponding vehicle unit rates named in MRT 15 apply only when the shipper enters into a written agreement with the carrier. When such contractual agreement is executed, applicant's otherwise applicable published tariff rates and the Commission's established minimum rates related thereto do not apply.

Transport Cartage has entered into agreements with Remington Office Machines Division and Remington Rand Office Systems Division, respectively, of Sperry Rand Corporation, at Los Angeles, to provide each shipper with the services of a truck and driver subject to the established vehicle unit rate provisions of applicant's Local Tariff

No. 113. Applicant's April, 1970, freight billing for such transportation services is set forth in Exhibit A appended to the application. The freight billing indicates that the carrier assessed its yearly vehicle unit rates per calendar month for the lease of a 1/2 ton panel truck and a 1-1/2 ton panel truck, with drivers, to the Remington Office Machines Division and the Remington Rand Office Systems Division, respectively, of Sperry Rand Corporation.

On April 6, 1970, Transport Cartage experienced a work stoppage due to a teamster driver strike in the Los Angeles Metropolitan Area. During the period from April 6 through April 22, 1970, Transport Cartage was unable to furnish drivers to operate its motor vehicular equipment assigned for the exclusive use of the two shippers involved herein. Consequently, the shippers were unable to make use of the motor vehicular equipment it had contracted for with applicant at the latter's published yearly vehicle unit rates. The shippers and Transport Cartage jointly agree that payment of the total monthly tariff charge for April, 1970, was unjust and unreasonable and not in the public interest.

Transport Cartage requests authority to make partial refund of its assessed charges for April, 1970, to the shippers involved. Applicant's proposed refund is predicated upon the procedures established in Decision No. 77655, dated August 25, 1970, in Application No. 51932 and Decision No. 67659 of August 4, 1964, in Case No. 7783 (Unreported). Decision No. 77655 authorized a basis for partial refund of Minimum Rate Tariff 15 vehicle unit rates because of carrier's inability to furnish drivers to operate leased motor vehicle equipment during the same teamster driver strike involved in this proceeding. Decision No. 67659 suggests a procedure for obtaining

relief from the provisions of MRT 15 in those circumstances where an inequitable result would obtain from interruption or termination of a written agreement executed under the governing provisions of the tariff.

A review of the historical cost evidence of record underlying the yearly vehicle unit rates, in effect during April, 1970, in applicant's Tariff No. 113 and MRT 15, discloses that said rates were predicated upon a total truck driver cost of \$5.442 per hour for 168 hours per month of straight time work performed. Such total driver cost includes, among other labor cost factors, the truck driver's basic wage rate of \$4.085 cents per hour plus an allowance of 19 cents per hour for Workmen's Compensation Insurance. Only these two labor cost elements were found, in Decision No. 77655, to be not actually experienced by the carrier during the April, 1970, work stoppages. Said decision authorized the carrier to refund to the shipper the aforesaid cost elements for each hour less than 168 hours per month each unit of equipment leased to the shipper was inactivated because of the teamster drivers' strike. In this proceeding the driver cost elements subject to refund amount to \$4.28 per hour. In Decision No. 77655, said cost elements amounted to \$4.41 per hour (basic tractor driver wage of \$4.21 per hour plus 20 cents for Workmen's Compensation Insurance).

Applicant in this proceeding, while adopting the procedure established in Decision No. 77655, erroneously referred to the cost factors involved in said decision, rather than the like lower cost factors for the smaller leased vehicular equipment involved in this proceeding. With the required correction in applicant's suggested basis for refund indicated above, the authority requested herein

would be in line with the relief granted in Decision No. 77655. The total amount of refund for 104 nonproductive driver hours (13 eight-hour work days) at \$4.28 per hour amounts to \$445.12 for each leased vehicle involved herein.

In consideration of the specific circumstances surrounding the transportation involved in Application No. 51937, as amended, the Commission finds:

1. Transport Cartage and Distributing Co., operating as a highway common carrier, had executed an agreement with Remington Office Machines Division and Remington Rand Office Systems Division of Sperry Rand Corporation, at Los Angeles, California, for the transportation of property under the carrier's yearly vehicle unit rates per calendar month contained in Western Motor Freight Tariff No. 113. Such written agreement for service was in effect during April, 1970.

2. During the period from April 6, 1970 through April 22, 1970 (13 eight-hour work days), Transport Cartage and Distributing Co. experienced a work stoppage caused by striking teamster drivers. During said work stoppage, applicant was unable to furnish drivers to operate its motor vehicle equipment assigned to Remington Office Machines Division and Remington Rand Office Systems Division of Sperry Rand Corporation under written agreements as provided in applicant's published Tariff No. 113.

3. Applicant has received compensation on the basis of the carrier's applicable tariff vehicle unit rates for the full month of April, 1970, even though the applicant's equipment leased to the shippers was inactivated during the month due to the driver strike experienced by applicant.

4. Applicant did not experience certain direct labor-related costs included in the assessed yearly vehicle unit rates per calendar month when it failed to furnish drivers to operate equipment leased to the shippers involved during April, 1970. Said direct labor-related costs amount to \$4.28 per hour and include the base truck drivers' wage rate of \$4.085 per hour plus an allowance of 19 cents per hour for Workmen's Compensation Insurance.

5. Applicant's two leased trucks were each inactivated for a total of 104 hours less than the 168 hours per month reflected in the carrier's yearly vehicle unit rates assessed for the transportation in question.

6. To the extent that Transport Cartage and Distributing Co. would retain that portion of the compensation it received from the shippers involved to cover the direct labor-related cost of \$4.28 per hour, for each of the 104 nonproductive driver hours per leased vehicle, an inequitable result would obtain within the meaning of Decisions Nos. 67659 and 77655, respectively.

7. The portion of the monthly freight charges assessed and collected by Transport Cartage and Distributing Co., for the transportation services involved herein and held in Finding 6 hereof to result in inequitable compensation, is hereby further found to be not justified and unreasonable.

8. Transport Cartage and Distributing Co. should be authorized to remit to each of the shippers the sum of \$4.28 for each of the 104 contract hours per unit of equipment applicant was unable to provide drivers to operate its leased equipment, due to the April, 1970, teamster driver work stoppage. The resulting refund to each shipper in the amount of \$445.12 has been shown to be fully justified.

The Commission concludes that Transport Cartage and Distributing Co. should be authorized under Sections 451, 494 and 734 of the Public Utilities Code, to make partial refund of its assessed charges, in the amounts of \$445.12 to Remington Office Machines Division and \$445.12 to Remington Rand Business Systems Division, respectively, of the Sperry Rand Corporation. A public hearing is not necessary.

IT IS ORDERED that:

1. Transport Cartage and Distributing Co. is hereby authorized to remit to Remington Office Machines Division and Remington Rand Business Systems Division, respectively, of Sperry Rand Corporation, a sum of \$4.28 for each of the 104 contract hours (168 hours per month per unit of equipment) applicant was unable to provide drivers to operate equipment leased to the aforesaid shippers due to a teamster driver strike from April 6, 1970 through April 22, 1970. The resulting partial refund of applicant's tariff charges, authorized under the order herein, amounts to \$445.12 to each shipper.

A. 51937 JR

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 the date hereof.

Dated at San Francisco, California, this 8th day of DECEMBER, 1970.

Chairman

August
William J. Vukasin, Jr.
Paul M. ...
Vernon L. Sturgeon
Commissioners

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