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Decision No. ~~78188~~

ORIGINAL

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 MIKE CONROTTO TRUCKING, a California corporation, KEN VILHAUER, doing business as KEN VILHAUER COMPANY, LUCKY STRIKE BROKERAGE CO., a California corporation, PURITY STORES, INC., a Nevada corporation, and C. H. ROBINSON CO., a Minnesota corporation.

Case No. 9099
(Filed August 4, 1970)

Norman R. Moon, for Mike Conrotto Trucking,
respondent.
William J. McNertney, Counsel, and E. H. Hjelt,
for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the rates, operations and practices of Mike Conrotto Trucking, a California corporation (Conrotto), for the purpose of determining whether said respondent violated Sections 453, 494 and 532 of the Public Utilities Code by charging and collecting less than applicable tariff rates in connection with for-hire transportation performed for the four respondent shippers named in the above caption and by failing to collect transportation charges within the credit period specified in the applicable tariff.

Public hearing was held before Examiner Mooney in Gilroy on September 29, 1970, on which date the matter was submitted.

Conrotto operates pursuant to a certificate of public convenience and necessity and radial highway common carrier and highway contract carrier permits. Its main office is in Gilroy, and it has terminals at said location and at Los Angeles and

El Centro. During the staff investigation referred to hereinafter, it employed 14 drivers and 9 office and other personnel; operated 11 tractors and 13 van semi-trailers; and had all applicable tariffs and distance tables, together with all supplements and additions to each. Its gross operating revenue for the year ending June 30, 1970 was \$917,678.

On various days during March and April 1969, a representative of the Commission staff visited Conrotto's place of business and examined its records for the period January through March 1969. He testified that Conrotto operates primarily as a certificated carrier; that the majority of the hauling performed by it is fresh fruits and vegetables; and that it engages subhaulers to augment its own equipment. The representative stated that he made true and correct photostatic copies of various invoices for produce hauling issued by Conrotto to the respondent shippers during the review period together with supporting documents and that all of said photocopies are included in Exhibits 1 through 4. He testified that Mr. Conrotto, the president of the respondent carrier, informed him that all instructions from the shippers for the transportation covered by the documents in Exhibits 1 through 4 were by telephone. The witness explained that all necessary supplemental information not shown on said documents was furnished to him by Mr. Conrotto or his employees.

The representative asserted that during his investigation he noted a substantial amount of outstanding freight charges due from a particular shipper had not been collected within the time period specified in the credit rule in Conrotto's tariff and that most of said charges remain uncollected. He testified that true and correct photostatic copies of Conrotto's Accounts Receivable Subsidiary Ledger and supporting invoices relating to this account

are included in Exhibit 5. The witness stated that Mr. Conrotto had informed him that this was a problem account which would be cleared up in the near future.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibits 1 through 4, together with the supplemental information testified to by the representative, and formulated the rate statements in Exhibits 6 through 9. Each of the rate exhibits shows the rate and charge assessed by Conrotto, the rate and charge computed by the staff and the amount of undercharge alleged by the staff for transportation performed by Conrotto for one of the respondent shippers. The rate expert testified as follows: Conrotto rated the transportation covered by each of the 41 parts in the staff rate exhibits as a single produce service shipment; in every instance, more than one unit of equipment was used to perform the transportation; paragraph (fff) of Item 145 of Conrotto's Local Tariff No. 1 specifically states that only one unit of equipment may be used to transport a produce service shipment; for this reason, the transportation could not be rated as Conrotto had done; the transportation handled by the additional equipment must be rated separately as shown in the staff ratings. The amount of the undercharges shown in each of the four rate exhibits, the shipper involved and the total of the undercharges in said exhibits are as follows:

<u>Exhibit No.</u>	<u>Shipper</u>	<u>Amount of Undercharges</u>
6	Lucky Strike Brokerage Co.	\$ 557.51
7	C. H. Robinson Co.	109.73
8	Ken Vilhauer Company	1,786.61
9	Purity Stores, Inc.	<u>171.04</u>
	Total of Undercharges	\$2,624.89

A member of the traffic department of Conrotto testified that special insulated and ventilated van equipment is used to transport lettuce, cabbage and other produce; that in accordance with union agreements, loaders will not load produce above a certain height in van equipment; that because of this agreement, it is not possible to load such equipment to its full carrying capacity when transporting said commodities; and that for this reason, he considers the produce to be light and bulky freight. He pointed out that the Special Equipment Rule set forth in Item 390 of Conrotto's aforementioned tariff provides as follows:

"At carrier's option it may, for its own convenience, place special equipment at shipper's disposal for loading or at consignee's disposal for unloading, whenever the quantity of freight exceeds the carrying capacity of carrier's regular route trucks, or whenever the freight is of a light or bulky nature."

Conrotto's witness asserted that in his opinion Item 390 supersedes the one unit of equipment limitation in paragraph (fff) of Item 145 and authorizes the respondent carrier at its option to utilize additional units of equipment to transport a produce service shipment. He, therefore, does not agree with the undercharges shown in the staff rate exhibits.

We do not concur with the witness for Conrotto that the Special Equipment Rule authorizes the use of additional equipment to transport a produce service shipment. The one unit of equipment limitation in the definition of a produce service shipment is clear and unambiguous. Said limitation applies under any and all circumstances. The Special Equipment Rule does not conflict with this restriction and is not an exception thereto. The staff ratings and alleged undercharges shown in its rate exhibits are correct.

Having so determined, it is not necessary to consider the contentions by Conrotto's witness that the produce shipments included in the staff investigation were light and bulky and that they required special equipment to transport. However, if these factors were at issue, we would have concluded that from a transportation standpoint, the produce was not light and bulky freight and that the equipment used to perform the transportation was a type generally used for such service.

Conrotto was a respondent in two prior investigation cases. One was discontinued (Decision No. 67521 dated July 14, 1964 in Case No. 7041), and a fine was imposed in the other (Decision No. 74034 dated April 30, 1968 in Case No. 8542). Rehearing was granted in the latter proceeding and a final decision has not as yet been issued on said rehearing.

Based on a review of the evidence, we are of the opinion that Conrotto should be directed to collect the undercharges found herein and that a fine in the amount of said undercharges plus a punitive fine of \$1,000 should be imposed on said respondent.

The Commission finds that:

1. Conrotto operates pursuant to a certificate of public convenience and necessity and radial highway common carrier and highway contract carrier permits.
2. Conrotto participated in and had copies of appropriate common carrier tariffs and distance tables during the period of time covered by the investigation herein.
3. The rates and charges computed by the staff in Exhibits 6 (Lucky Strike Brokerage Co.), 7 (C. H. Robinson Co.), 8 (Ken Vilhauer Company) and 9 (Purity Stores, Inc.) are correct.

4. Conrotto charged less than lawfully prescribed tariff rates in the instances set forth in Exhibits 6 (Lucky Strike Brokerage Co.), 7 (C. H. Robinson Co.), 8 (Ken Vilhauer Company) and 9 (Purity Stores, Inc.) resulting in undercharges in the amount of \$557.51, \$109.73, \$1,786.61 and \$171.04, respectively. The total amount of the undercharges in said four exhibits is \$2,624.89.

5. Conrotto did not collect a substantial amount of freight charges from a particular shipper within the allowable credit period specified in its tariff.

The Commission concludes that Conrotto violated Sections 453, 494 and 532 of the Public Utilities Code and should pay a fine pursuant to Section 2100 of said code in the amount of \$2,624.89, and in addition thereto should pay a fine pursuant to Section 1070 thereof in the amount of \$1,000.

The Commission expects that Conrotto 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 said respondent and the results thereof. If there is reason to believe that either said respondent 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. Mike Conrotto Trucking, a California corporation, shall pay a fine of \$3,624.89 to this Commission on or before the fortieth day after the effective date of this order.
2. Said respondent 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.
3. Said respondent 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 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, said respondent 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.
4. Said respondent shall cease and desist from violating applicable tariff rules and from charging and collecting compensation for the transportation of property or for any service in connection therewith in a different amount than the applicable highway common carrier tariff rates and charges.

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The Secretary of the Commission is directed to cause personal service of this order to be made upon Mike Conrotto Trucking. The effective date of this order, as to this respondent, shall be twenty days after completion of personal service. The Secretary is further directed to cause service by mail of this order to be made upon all other respondents. The effective date of this order, as to these respondents, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 19th
day of JANUARY, 1971.

Chairman

William S. Quinn
John P. ...
Vernon L. Sturgeon

Commissioners

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