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Decision No. 78490

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 T & T)
TRUCKING, INC., a California)
corporation, and GRANITE CONSTRUCTION)
COMPANY, a California corporation.)

Case No. 9109
(Filed August 25, 1970)

Loughran, Berol & Hegarty, by
Marshall G. Berol, Attorney at Law,
for T & T Trucking, Inc.; and
D. V. Otjen, for Granite Construction
Company; respondents.
W. J. McNertney, Attorney at Law, and
E. E. Cahoon, 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 T & T Trucking, Inc., a California corporation (T & T), for the purpose of determining whether said respondent violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code by charging and collecting less than applicable minimum rates provided in Minimum Rate Tariff 7 (MRT 7) in connection with the for-hire transportation of asphaltic concrete in dump truck equipment for Granite Construction Company, a California corporation (Granite), and whether T & T failed to pay subhauliers employed by it to perform part of said transportation the applicable charges specified in Item 94 of the tariff.

Public hearing was held before Examiner Mooney in Lodi on December 2, 1970, on which date the matter was submitted.

T & T operates pursuant to radial highway common carrier and dump truck carrier permits and a cement carrier certificate. It

has a terminal in Lodi. During the staff investigation referred to hereinafter, it employed five drivers, an estimator, a dispatcher, a mechanic and four office employees; it operated five tractors and 74 trailers; and it had been served with MRT 7, together with all supplements and additions thereto. Its gross operating revenue for the year ending September 30, 1970 was \$1,672,065.

On various days during latter 1969 and early 1970, a representative of the Commission staff visited T & T's place of business and examined its records relating to three hauling jobs for highway construction projects in the vicinity of Elk Grove, Rumsey and Placerville performed during June and July 1969. All of said transportation was for Granite. The representative testified that the majority of the hauling was performed by subhaulers and that some of the subhaulers rented trailers from T & T. He stated that he made true and correct photostatic copies of the rate quotation sheet, billing statements, invoices and freight bills for the three jobs and that all of the photocopies are included in Exhibits 1, 2 and 3. The witness pointed out that the quotation sheet, which was prepared by T & T, shows that the rates for the three jobs were bid on a tonnage basis; whereas, the transportation was subject to the minimum hourly rates in MRT 7. In this connection, paragraph (a) of Item 47 of the tariff provides that, "Rates or accessorial charges shall not be quoted or assessed by carriers based upon a unit of measurement different from that in which the minimum rate and charges in this tariff are stated for the type of shipment being rated." There are no zone or tonnage rates published for the transportation herein. In the circumstances, the transportation was subject to the applicable minimum hourly rates in MRT 7 as asserted by the staff.

The representative testified that T & T based the charges it assessed Granite on the quoted tonnage rates. He explained that by a conversion formula, T & T had shown on its billing to Granite a number of hours and a higher than minimum hourly rate which then multiplied together closely approximated said tonnage charges; that the actual hours worked were recorded on the daily freight bills prepared by the drivers of the equipment; that the fictitious hours shown on the billing statements were substantially less than the actual hours; and that the assessed charges were below the applicable minimum charges based on the correct hours and the applicable minimum hourly rate.

The representative stated that the personnel responsible for the billing in Exhibits 1 through 3 are no longer with T & T; that T & T has billed Granite for \$3,923.23 in additional charges; that an undercharge letter was sent to the predecessor partnership, of which the president of T & T was a partner, in 1963; that this is the first formal investigation of T & T; and that T & T had been cooperative during the staff investigation.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibits 1, 2 and 3, together with the supplemental information testified to by the representative, and formulated Exhibit 4 which shows the net chargeable time, the minimum hourly rate and charge, the amount assessed by T & T and the resulting undercharge and underpayments to subhaulers for the transportation covered by each of the billing statements. He explained that he computed the net chargeable hours from the time information recorded by the drivers on the freight bills. He asserted that the total of the undercharges shown in Exhibit 4 is \$8,082.67 and that by deducting the \$3,923.93 billed to Granite for additional charges subsequent to the issuance of the billing statements, the net undercharge is \$4,158.74.

The rate expert testified that the amount of the underpayments due each subhauler for the transportation in issue is set out in Exhibit 4-A and that the total of said underpayments is \$3,061.96. He stated that the underpayments were calculated in accordance with the applicable rule governing payments to sub-haulers in Item 94 of MRT 7. He pointed out that in some instances T & T had paid a particular subhauler more than the minimum payments required by Item 94 for certain shipments and that he did not deduct such amounts from underpayments below the required minimum due the same subhauler on other shipments. We agree with the staff that MRT 7 makes no provision for the offsetting of a payment above the applicable minimum on one shipment against an underpayment below the applicable minimum on another shipment by the same subhauler. The tariff sets minimum standards only. Each shipment is a separate transaction and must be considered individually.

No direct evidence was presented on behalf of either respondent.

In his closing statement, counsel for the staff asserted that the violations herein resulted from the known falsification of records by T & T and that this is the type of violation the Commission has heretofore held should be punished by the imposition of heavy fines or suspensions.^{1/}

The attorney representing T & T argued that the facts and circumstances herein do not warrant a severe penalty as

^{1/} In re Minimum Rate Tariff No. 7, Decision No. 69567 in Case No. 5437, 64 Cal. P.U.C. 689 (1965); In re Princeton Equipment Co., Inc., Decision No. 75358 in Case No. 8807, mimeographed copy (1969).

recommended by staff counsel. In support of his argument, he stated that the estimates were given to Granite with the understanding that if the resulting charges were below the minimum level, minimum charges would be assessed; that the clerk who prepared the billing was informed of this but apparently did not follow instructions; that none of the personnel responsible for the billing are now with the company; and that there was no wilful intent by T & T to violate applicable minimum rates and regulations.

We concur with the staff's ratings, the undercharges and the underpayments shown in Exhibits 4 and 4-A. Based on a review of the record, we are of the opinion that T & T should be directed to collect the undercharges from Granite and remit the underpayments to the subhaulers; that a fine in the amount of the difference between the collection and payments should be imposed on T & T; and that in addition thereto, a punitive fine of \$1,000 should be imposed on said respondent. T & T is placed on notice that the falsification of records is a serious matter that will not be tolerated. The fact that the personnel who prepared and issued the billing are no longer with the company does not exonerate T & T. It is a well settled principle that the actions of an employee within the scope of his employment prior to the termination thereof are imputed to his employer.

The Commission finds that:

1. T & T operates pursuant to radial highway common carrier and dump truck carrier permits and a cement carrier certificate.
2. T & T was served with MRT 7, together with all supplements and additions thereto.
3. The transportation covered by Exhibits 1, 2 and 3 was subject to the hourly rates in MRT 7.

4. The staff ratings and the undercharges shown in Exhibit 4 are correct.

5. Subsequent to the issuance of the invoices listed in Exhibit 4, T & T billed Granite for \$3,923.93 in additional charges for the transportation in issue.

6. By taking into account the additional billing referred to in Finding 5, T & T charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 4 resulting in a total net undercharge of \$4,158.74.

7. T & T paid most of the subhaulers engaged by it to perform the majority of the transportation summarized in Exhibit 4 less than 95 percent of the applicable minimum rates, excluding authorized deductions, as required by Item 94 of MRT 7.

8. MRT 7 makes no provision for offsetting an amount above the applicable minimum paid to a subhauler for a particular shipment against an amount below the applicable minimum which had not been paid to the same subhauler for another shipment. Each shipment is a separate transaction.

9. Exhibit 4-A correctly shows the amount of underpayments due each subhauler. The total of the underpayments listed in said exhibit is \$3,061.96.

The Commission concludes that T & T violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of said Code in the amount of \$1,096.78 (the difference between the net undercharge in Finding 6 and the total of the underpayments to subhaulers in Finding 9), and in addition thereto should pay a fine pursuant to Section 3774 thereof in the amount of \$1,000.

The Commission expects that T & T will promptly pay to the subhaulers engaged by it to perform the transportation covered

by Exhibit 4 the amounts of underpayments shown in Exhibit 4-A and that T & T will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges shown in Exhibit 4. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent and the results thereof. If there is reason to believe that all underpayments to subhaulers have not been made or that either respondent or his 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 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. T & T Trucking, Inc., a California corporation, shall pay a fine of \$2,096.78 to this Commission on or before the fortieth day after the effective date of this order.
2. Said respondent shall pay to the subhaulers engaged to perform the transportation covered by Exhibit 4 the amounts of underpayments shown in Exhibit 4-A and shall notify the Commission in writing when said payments have been made in full.
3. Said respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth in Exhibit 4 and shall notify the Commission in writing upon the consummation of such collections.
4. Said respondent shall promptly pay the underpayments and shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and in the event

underpayments ordered to be paid by paragraph 2 or undercharges ordered to be collected by paragraph 3 of this order, or any part of such underpayments or undercharges, remain unpaid or 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 underpayments remaining to be paid and the undercharges remaining to be collected, specifying the action taken to pay such underpayments and to collect such undercharges and the result of such action, until such underpayments have been paid in full and such undercharges have been collected in full or until further order of the Commission.

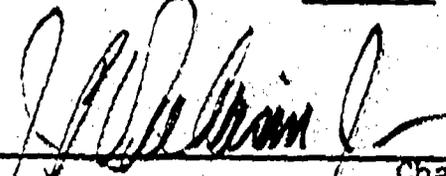
5. Said respondent shall cease and desist from violating any rules established by the Commission, including Items 47 and 94 of Minimum Rate Tariff 7, and from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon T & T Trucking, Inc. The effective date of this order, as to this respondent, shall be twenty days after the completion of such service. The Secretary

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is further directed to cause service by mail of this order to be made upon Granite Construction Company. The effective date of this order, as to the latter respondent, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 30th day
of MARCH, 1971.



Chairman


James L. Sturgeon


Commissioners

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