

Decision No. 79102**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF GENERAL
SERVICES,

Complainant,

vs.

Alltrans Express, a corporation,
Big Pine Trucking Company, a cor-
poration, California Motor Express,
a corporation, G. I. Trucking Co.,
a corporation, Smith Transporta-
tion Company, a corporation, and
System 99, a corporation,
Defendants.Case No. 9201
(Filed March 10, 1971)O P I N I O N

By the above complaint, the California Department of General Services seeks reparation plus interest at seven percent from the highway common carrier defendants listed in the caption in connection with the transportation of less than truckload shipments of spheres, highway marking, strip, glass, as described in Item 177260 of National Motor Freight Classification A-11 (NMFC A-11), by said defendants for said complainant during the period June 11, 1970 to October 15, 1970. The total number of shipments transported by all defendants during said period was 12 and the total amount of the reparation sought is \$360.49 plus interest.

The complaint states as follows: NMFC A-11 canceled NMFC A-10 effective June 11, 1970; the less than truckload rating for the commodity in issue in NMFC A-10 was Class 55; due to a printing error which was not discovered, the rating was shown as Class 85 in the new classification; in Supplement 8 to NMFC A-11, effective October 15, 1970, this error in Item 177260 was corrected to show the Class 55 rating; defendant carriers assessed rates and

charges based on the erroneous Class 85 rating to complainant between June 11, 1970 and October 15, 1970; said rates and charges were excessive in that the rating on which they were based was filed without lawful authority, in violation of the Public Utilities Act; that such charges although erroneously high were paid by complainant; since said charges were unreasonable and excessive, complainant suffered damages and is entitled to reparation in the amount of the difference between the charges based on the Class 85 and Class 55 ratings.

Letters or answers to the complaint were received from each of the defendants requesting that the complaint be dismissed. The replies were somewhat similar. The substance of the replies was as follows: Section 494 of the Public Utilities Code provides in part that no common carrier shall charge a different compensation for the transportation of property than the applicable rates and charges specified in its effective tariff on file with the Commission at the time of movement; the effective tariff of each of the defendants at the time the involved transportation moved was subject to NMFC A-11 and the applicable rating therein for the commodity shipped was the Class 85 rating in Item 177260; the increase in Item 177260 did not violate the provisions of Section 454 of the Code which provide in essence that no highway common carrier shall raise any rate or so alter any classification as to result in an increase without authority of the Commission; in this regard, the Commission, in Decision No. 77175, dated May 5, 1970, in Application No. 51799, Petition 580 in Case No. 5432 et al., found all ratings, including all increases in NMFC A-11, to be just and reasonable and ordered highway common carriers to observe said ratings; Section 734 of the Code provides that no reparations may be awarded where the rate in question has been declared by the Commission to be reasonable; in the circumstances, the complaint should be dismissed.

G. I. Trucking in its answer to the complaint included a Motion to Dismiss and a Motion to Strike the complaint. The

attorney for Big Pine Trucking Company and System 99 has informed the Commission, by letter dated June 7, 1971, that because of the modest sums involved for his clients, namely \$102.55 and \$76.10, respectively, said claims have been paid. Complainant, by letter dated June 4, 1971, confirmed that said claims have been paid and requested that its complaint against said two defendants be dismissed.

Based on a review and investigation of the record herein, Application No. 51799 and the related petitions in various minimum rate cases for authority to reissue the classification and adopt NMFC A-11 and Decision No. 77175 which granted said request effective June 11, 1970, we are of the opinion that the relief sought in the complaint should be granted. Paragraph IV of said application and petitions stated that all changes made in NMFC A-11 and the justification therefor are listed in Exhibit B attached thereto and made a part thereof. NMFC A-11 is 767 pages and includes thousands of separately listed articles and classifications, numerous rules and other explanatory information. It is evident that the only logical manner in which changes in the proposed classification could be clearly brought to the Commission's attention is by a separate listing as was done in said Exhibit B which listed over 250 separate items in which changes were made. Item 177260, with which we are here concerned, was not included in the list or otherwise mentioned in the exhibit. It is apparent, therefore, that there was no intent by applicant and petitioner to increase the Class 55 rating in NMFC A-10 to Class 85 in the new classification. Finding 2 in Decision No. 77175 stated that "the proposed classification revisions set forth in Application No. 51799 are reasonable and, to the extent that said ratings and rules will result in increases, such increases are justified." Since all changes proposed in Application No. 51799 were listed in Appendix B thereto, it is obvious that said finding applied only to those listed therein and did not apply to Item 177260.

Having determined that no finding of reasonableness was made in Decision No. 77175 regarding Item 177260, we are not concerned herein with the prohibition in Section 734 of the Public Utilities Code which bars the payment of reparation upon the grounds of unreasonableness when the rating in question has been declared by formal order of the Commission to be reasonable. The increase in question was an unauthorized increase in violation of Section 454 of the Code. Furthermore, by Application No. 52121 and related petitions in various minimum rate cases, applicant and petitioner requested authority to issue Supplement 8 to NMFC A-11, which included certain changes. The changes and the justification therefor are listed and summarized in Exhibit B to said application and petitions. Included in the list is Item 177260 and the less truckload rating therefor is shown as Class 55. The accompanying explanation states that due to a proofreading error the rating was shown as Class 85 in NMFC A-11 and that the change in Supplement 8 was made to correct this error. Decision No. 77756 authorized the issuance of Supplement No. 8 and made it effective October 15, 1970.

Since we have concluded that the relief requested should be granted, there is no need to discuss the motions by G. I. Trucking to dismiss and to strike the complaint. The order which follows will approve the settlement of the claims against Big Pine Trucking Company and System 99 and will dismiss them as defendants herein as requested by complainant.

The Commission finds that:

1. Defendants all operate as highway common carriers.
2. Defendants transported as highway common carriers 12 less than truckload shipments of spheres, highway marking, strip, glass as described in Item 177260 of NMFC A-11 for complainant during the period June 11, 1970 to October 15, 1970.
3. NMFC A-10 was canceled by NMFC A-11 effective June 11, 1970.
4. The less than truckload rating in NMFC A-10 for the commodity described in Finding 2 was Class 55, and the less than

truckload rating for said commodity published in Item 177260 of NMFC A-11 was Class 85.

5. All increases sought to be made in NMFC A-11 and the justification therefor were listed and summarized in Appendix B to Application No. 51799 and related petitions. No reference was made in said appendix to Item 177260.

6. Decision No. 77175, which authorized the issuance of NMFC A-11, found as just and reasonable only those changes listed in Appendix B to Application No. 51799.

7. The increase of the less than truckload rating to Class 85 in Item 177260 of NMFC A-11 was an unauthorized increase in violation of Section 454 of the Public Utilities Code.

8. An increased rating published without the Commission's approval is an excessive rate within the meaning of Section 734 of the Public Utilities Code. (See Carnation Co. v. Southern Pacific Co. (1950), 50 Cal. P.U.C. 345; (1951) 51 Cal. P.U.C. 25.)

9. The less than truckload rating in Item 177260 of NMFC A-11 was reduced to Class 55 in Supplement 8 thereto effective October 15, 1970 pursuant to Decision No. 77756. The justification for this change stated in the application and petitions filed in connection therewith was that the Class 85 rating shown in NMFC A-11 was a proofreading error and that the rating should have been Class 55 as shown in NMFC A-10.

10. Transportation charges assessed by defendants in excess of those based on Class 55 for the less than truckload shipments in issue transported for complainant during the period June 11, 1970 through October 15, 1970 were unreasonable and excessive. The number of such shipments transported and the excess amount charged by each defendant during said period are as follows:

<u>Defendant</u>	<u>Number of Shipments</u>	<u>Excess Amount Charged</u>
Alltrans Express	2	\$ 48.13
Big Pine Trucking Company	3	102.55
California Motor Express	1	50.68
G. I. Trucking Co.	1	34.00
Smith Transportation Company	2	49.03
System 99	3	76.10
Total	<u>12</u>	<u>360.49</u>

11. Big Pine Trucking Company and System 99 have paid the amount shown in Finding 10 to complainant.

12. No discrimination would result from authorizing or directing payment of the reparation sought by complainant herein.

The Commission concludes that:

1. The payment of the amount of reparation referred to herein by Big Pine Trucking Company and System 99 to complainant should be approved and the complaint against said two defendants should be dismissed.

2. As to all other defendants not referred to in Conclusion 1, the sought relief should be granted.

3. The motions by G. I. Trucking Company to dismiss and to strike the complaint should be denied.

O R D E R

IT IS ORDERED that:

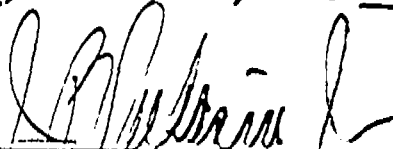
1. The settlement by Big Pine Trucking Company, a corporation, and System 99, a corporation, with California Department of General Services of the reparation claim herein against each is approved, and the complaint against said two defendants is dismissed.

2. Alltrans Express California, Inc., a corporation, California Motor Express, Ltd., a corporation, G. I. Trucking Company, a corporation, and Smith Transportation Company, a corporation, shall refund to complainant, California Department of General Services, on or before the fortieth day after the effective date of this order, the amount of the reparation claim set forth herein against each of said defendants, together with interest at seven percent per annum, and shall notify the Commission in writing upon the payment thereof.

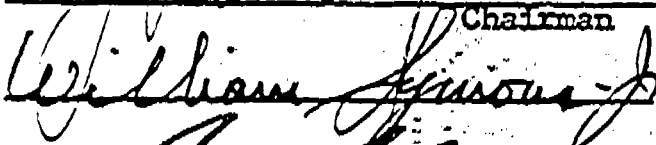
3. The motions by G. I. Trucking Company, a corporation, to dismiss and to strike the complaint herein are denied.

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

Dated at San Francisco, California, this 31st day of AUGUST, 1971.

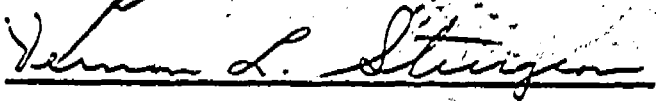


Chairman

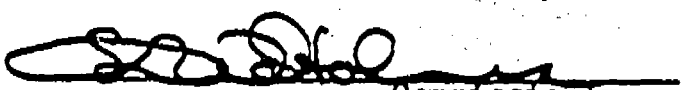


William J. Johnson





Vernon L. Sturgeon



Commissioners