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Decision No. 79111

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates, and practices of MOISI AND  
SON TRUCKING, INC., a corporation;  
SUPERIOR ROOFING COMPANY, a  
corporation, doing business as  
H & H SUPPLY; and CELOTEX CORPORA-  
TION, a corporation.

Case No. 9240  
(Filed June 29, 1971)

Joseph A. Moisi and Robert P. Jack,  
for Moisi and Son Trucking, Inc.,  
respondent.  
Michael J. Stecher, Attorney at Law,  
for the Commission staff.

O P I N I O N

By its order dated June 29, 1971, the Commission instituted an investigation into the operations, rates and practices of Moisi and Son Trucking, Inc. (Moisi), Superior Roofing Company, doing business as H & H Supply (Superior) and Celotex Corporation (Celotex). A copy of the Order Instituting Investigation together with a notice of the date, time and place of hearing was personally served on the president of Moisi. Copies of said Order Instituting Investigation were mailed to Superior and Celotex. The latter two companies made no appearance at the public hearing which was held before Examiner Rogers in Anaheim, California, on July 26 and 27, 1971.

Moisi conducts operations pursuant to radial highway common carrier and contract carrier permits. It has a single terminal in Anaheim. It operates 12 tractors, 21 trailers and 12 dump trucks. It has 8 drivers, one shop man, and one office employee. Its total gross revenue for the year 1970 was \$320,532.

It has, and at all times referred to herein, had copies of the applicable tariff and distance tables.

A Commission staff transportation representative testified that he visited Moisi's place of business in March 1971 and requested its records for the period from October 1, 1970 to March 19, 1971, inclusive; these documents were given by Moisi's president to the witness; the representative found 18 shipments in which Celotex in Los Angeles was the consignor and Superior in Sacramento was the listed consignee, but, in fact, the places of delivery were not the destination (Sacramento) shown on the freight bills; and the representative asked Moisi's president if all shipments for Celotex and Superior were to Sacramento and Moisi's president said yes. The representative further stated that the 18 shipments shown in Exhibit No. 1 each required two separate trucks and were, in fact, delivered to points as follows:<sup>1/</sup>

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<sup>1/</sup> As an example, the staff called as a witness Mr. Shannon, a former driver for respondent. He testified that he carried the 47,096 pound portion of the shipment shown as Part 2 of Exhibit No. 1 from Los Angeles to Suisun, although the freight bill #4379 shows delivery to Sacramento. His log of the shipment, Exhibit No. 5 herein, shows actual delivery to Suisun.

<u>Freight B Bill No.</u>	<u>Dated</u>	<u>Part in Exhibit No. 1</u>	<u>Delivered to</u>
5880	10/5/70	1	Suisun
5882	10/7/70	2	Pleasant Hill-Suisun
5905	10/15/70	3	Rohnert Park-Sacramento
5911	10/19/70	4	Suisun-Pleasant Hill
5914	10/21/70	5	Suisun-Sacramento
1537	11/13/70	6	Rohnert Park-Sacramento
1538	11/17/70	7	Rohnert Park-Suisun
1545	11/23/70	8	Rohnert Park-
1546	11/24/70	9	Sacramento-Rohnert Park
1548	11/30/70	10	Rohnert Park
1560	12/1/70	11	Rohnert Park
1549	12/2/70	12	Rohnert Park
1603	1/11/71	13	Suisun-Sacramento
1604	1/13/71	14	Sacramento-Rohnert Park
1620	1/14/71	15	Rohnert Park
1629	1/20/71	16	Sacramento-Suisun
1623	1/21/71	17	Sacramento-Suisun
1633	1/28/71	18	Sacramento-Suisun

Copies of all documents relating to the 18 shipments herein considered were submitted to the Rate Analysis Unit of the Commission's Transportation Division. This unit prepared two rate studies (Exhibits 3 and 4) relative to the 18 transactions reflected on the documents comprising Exhibit No. 1. As analyzed by the staff, Moisi undercharged for the transportation a total of \$6,682.86. The Associate Transportation Rate Expert for the Commission who prepared Exhibits 3 and 4 from the original documents comprising Exhibit No. 1, stated the records reflect two types of violations relative to the 18 shipments here considered. One, the destination in each instance is listed as Sacramento whereas as shown on the foregoing tabulation, the destination was usually either a different point of destination or a split delivery shipment with two points of destination and applicable rates were greater than those assessed by the carrier. Secondly, the shipper and the carrier did not issue documents to qualify the shipments as multiple lot or split delivery shipments as actual points of destination were not shown. These facts bring the

provisions of subparagraph 3 of Part (a) of Item 85 of Minimum Rate Tariff 2 into effect. Said item reads as follows:

- "3. At the time of or prior to the initial pickup, the carrier shall issue to the consignor a single multiple lot document for the entire shipment. It shall show the name of the consignor, point of origin, date of the initial pickup, name of the consignee (or consignees), point of destination (or points of destinations), and the kind and quantity of property.

The staff transportation representative testified that on October 4, 1963, Moisi undercharged a shipper \$361 for the transportation of roofing and collected this sum. In addition, by Decision No. 70844 dated June 16, 1966, in Case No. 8336, Moisi was found to have charged less than the lawfully prescribed minimum rates for transportation of items including roofing material and was ordered to pay a fine of \$1,192.44, the amount of undercharges, and to take steps to collect said amount from the shippers.

The respondent agreed that the undercharges exist as set forth in the Exhibits 3 and 4 herein. Respondent's traffic consultant urged that certain shipments (Exhibit 1, Parts 1, 8, 10, 11 and 12) were incorrectly rated by the Commission staff. We find no error.

We find that:

1. Respondent, Moisi, operates pursuant to radial highway common and highway contract carrier permits issued by this Commission.
2. Respondent, Moisi, was at all times herein considered in possession of and familiar with all applicable tariffs and distance tables.
3. Respondent, Moisi, misstated the destination points in all shipments represented by Exhibit No. 1 herein. This misstatement was deliberate and intentional with the intent of misleading the Commission and securing a preference for the shipper and consignee in each instance.
4. Respondent, Moisi, charged less than the lawfully prescribed minimum rates in each instance set forth in Exhibits Nos. 1, 3 and 4, resulting in undercharges of \$6,682.86.

Based on the foregoing findings, the Commission concludes that:

1. Respondent, Moisi, violated Section 3664 of the Public Utilities Code.
2. Respondent, Moisi, violated Section 3667 of the Public Utilities Code.
3. Respondent, Moisi, violated Section 3668 of the Public Utilities Code.
4. Respondent, Moisi, violated Section 3737 of the Public Utilities Code.
5. The violations by Moisi were deliberate and with intent to charge lower rates than prescribed by the applicable tariffs and rules and to thereby give Superior and Celotex preference.
6. Respondent, Moisi, should be required to collect the said undercharges from Superior in the amount of \$4,726.06 and from Celotex in the amount of \$1,956.80 and should pay a fine pursuant

to Section 3800 of the Public Utilities Code in the amount of \$6,682.86, and in addition thereto should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$2,000.

The Commission expects that respondent 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 thereof. If there is reason to believe that either 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

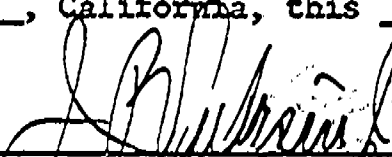
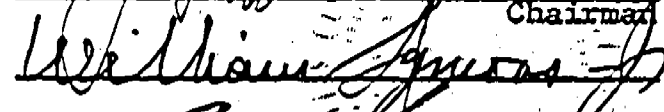
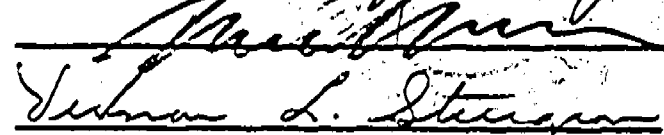

IT IS ORDERED that:

1. Respondent, Moisi and Son Trucking, Inc., 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.
2. Respondent, Moisi and Son Trucking, Inc., shall pay a fine of \$8,682.86 to this Commission on or before the fortieth day after the effective date of this order.
3. Respondent, Moisi and Son Trucking, Inc., 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.

4. In the event undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent, Moisi and Son Trucking, Inc., shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; respondent, Moisi and Son Trucking, Inc., 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 and 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Moisi and Son Trucking, Inc., a corporation. 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 31st  
day of AUGUST, 1971.

  
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Chairman  
  
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Commissioners