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Decision No. 79530

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of Louie F. Rodriguez, doing business as Rod Transportation and Sweet Trucking Company.

Case No. 9258  
(Filed August 10, 1971)

Louie F. Rodriguez, in propria persona, respondent.  
William D. Figg-Hoblyn, Attorney at Law, and Edward Hielt, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion for the purpose of determining whether Louie F. Rodriguez, doing business as Rod Transportation and Sweet Trucking Company, violated Section 3737 of the Public Utilities Code by failing to comply with paragraph 4 of General Order No. 102-C by not paying subhaulers within the required time stated therein. Said General Order sets forth "Rules to Govern Bonding Requirements in connection with Subhauling or Leasing of Equipment". Paragraph 4, insofar as it relates to payments to subhaulers, provides that the prime carrier shall pay the subhauler the charges specified in the written subhaul agreement on or before the twentieth day of the calendar month following the completion of the shipment.

Public hearing was held before Examiner Mooney in Los Angeles on August 31, 1971, on which date the matter was submitted.

Respondent operates pursuant to radial highway common carrier and highway contract carrier permits. He transports forest products and general commodities, including canned goods. On the date of the hearing herein, he had a subhaul bond on file with the Commission. Several prior bonds were canceled, and in each instance, respondent obtained a new bond from another insurer. During the staff investigation referred to hereinafter, he had a terminal in Wilmington; he

operated 14 trucks, 8 tractors and 35 trailers; and he employed 18 drivers and 3 shop and 2 office personnel. His gross operating revenue for the year 1970 was \$511,698, of which \$87,177 was paid to subhaulers, and for the first six months of 1971 was \$232,670, of which \$62,272 was paid to subhaulers.

On various days during May and June 1971, a representative of the Commission staff visited respondent's place of business and examined his records relating to payments to subhaulers for the period January through May 1971. The representative's testimony and the information included in Exhibit 1, which was presented in evidence by him, was as follows: Respondent was cited pursuant to the informal citation procedure of the Commission in the early part of 1971 for violation of Section 3737 of the Public Utilities Code by failing to pay subhaulers within the time period specified in Paragraph 4 of General Order No. 102-C; said Citation No. F-157 provided that if respondent would pay a fine of \$500 pursuant to Section 3774 of the Code and make a dilligent effort to correct the violations noted therein, no further proceedings would be held with respect to the violations described therein; on April 19, 1971, respondent signed a statement that he would not contest said citation and paid the \$500 fine; on April 26, 1971, respondent was placed on notice by the staff that a re-examination of his records would be made in the future and if similar violations were disclosed thereby, penalties as provided in the Public Utilities Code may be incurred; a form acknowledging said notice was signed by respondent; the staff investigation referred to hereinabove disclosed that this type of violation was continuing; a list prepared by respondent's wife for the representative showed that as of June 4, 1971, delinquent payments due subhaulers totaled \$34,852; generally, respondent would pay the oldest accounts in time first; respondent had written subhaul agreements for all shipments transported by subhaulers, and the amount to be paid to the subhauler for each shipment was stated therein; the respondent's own equipment was in good condition, and by limiting his operations to his own equipment, respondent could operate at a profit and pay all delinquent subhaul accounts within six months.

Respondent testified that as of the date of hearing the indebtedness to subhaulers had been reduced to approximately \$26,200 and a diligent effort is being made to pay off the balance. He stated that he has invested all of his savings in the business and does not have sufficient funds available to pay the subhaulers for the services they perform until he collects the money due him from the shippers for whom said services are performed. The witness explained that delay in receiving payments from shippers is the primary cause of the problem in issue. In this regard, he testified that many of the shippers have informed him that if he is not willing to wait for payment, they will cancel their account with him and engage other carriers, and that he has had this happen on several occasions. He stated that all money received in connection with shipments subhauled for him is applied towards reducing the outstanding subhauler accounts. Respondent asserted that he has substantial claims against some of the subhaulers although he does realize that they cannot be offset against money due said subhaulers for transportation performed.

On September 23, 1971, respondent informed the Commission that he was cancelling his subhaul bond; that he no longer intended to use subhaulers; and that he would liquidate the delinquent subhaul accounts as soon as possible. According to the Commission's records, the notice of cancellation of the last subhaul bond filed for respondent was received on September 27, 1971, and the cancellation thereof became effective on October 27, 1971. No subhaul bond for respondent has been filed with the Commission subsequent thereto.

The facts herein are not in dispute and do not require further discussion. Based on a review of the record, we are of the opinion that a punitive fine of \$500 should be imposed on respondent. In arriving at the amount of said fine, we have taken into account the fact that respondent has heretofore paid a fine of \$500 in connection with the aforementioned Citation No. F-157 and that he is assertedly taking steps to pay all delinquent subhaul accounts.

The order which follows will provide that respondent may not utilize the services of subhaulers until all delinquent subhaul accounts have been paid in full; that all said accounts shall be paid promptly; that until said liabilities have been satisfied, respondent shall file a monthly report showing the current status of said accounts; and that in the event any amount due on said accounts remains unpaid 180 days after the effective date of this order, all operating authority held by respondent shall be suspended without further order of the Commission.

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and highway contract carrier permits.
2. Respondent utilized other carriers to perform subhaul services for him during the period January through May 1971.
3. At the time referred to in Finding 2, respondent continually had an effective subhaul bond on file with the Commission as required by General Order No. 102-C.
4. Respondent paid a fine on April 19, 1971, pursuant to informal Citation No. F-157, for failing to pay certain subhaulers on or before the twentieth day of the calendar month following the completion of the shipments they transported as required by Paragraph 4 of General Order No. 102-C.
5. As of June 4, 1971, the total of the amounts respondent had not paid to subhaulers within the time period specified in Paragraph 4 of General Order No. 102-C was \$34,852.
6. As of the date of the hearing herein (August 31, 1971), respondent had reduced the delinquent accounts due subhaulers to approximately \$26,200.
7. The last subhaul bond filed by respondent with the Commission was cancelled effective October 27, 1971, and no new subhaul bond has been filed by respondent subsequent thereto.

The Commission concludes that:

1. Respondent violated Section 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3774 of said code in the amount of \$500.
2. Respondent should be directed to cease and desist violating the provisions of Paragraph 4 of General Order No. 102-C relating to payments to subhaulers, and in the event respondent has not paid all outstanding amounts due subhaulers in accordance with said provisions within 180 days after the effective date of the order which follows, all operating authority held by respondent should be suspended forthwith without further order of the Commission.

The staff of the Commission will make a subsequent field investigation to determine whether respondent has complied with all provisions of the following order. If there is reason to believe he has not so complied and has not made a diligent effort to pay all amounts due subhaulers as soon as possible, 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 against respondent.

O R D E R

IT IS ORDERED that:

1. Louie F. Rodriguez, doing business as Rod Transportation and Sweet Trucking Company, shall pay a fine of \$500 to this Commission on or before the fortieth day after the effective date of this order.
2. Respondent shall pay any and all amounts owed by him to subhaulers for transportation services they have performed for him, and shall notify the Commission in writing upon the completion of such payments.
3. Respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to pay the amounts owed said subhaulers, and in the event payments ordered to be made by paragraph 2 of this order, or any part of said payments, remain unpaid thirty

days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of said thirty days, a report of the remaining amounts owed to subhaulers, specifying the steps taken to obtain the necessary funds to make such payments and the results thereof, until such payments have been made in full or until further order of the Commission.

4. Respondent shall not utilize the services of subhaulers until paragraph 2 of this order has been complied with in its entirety.

5. In the event respondent has not complied with paragraph 2 of this order within 180 days after the effective date hereof, all operating authority held by respondent shall be suspended forthwith without further order of the Commission.

6. Respondent shall cease and desist violating General Order No. 102-C.

The Secretary of the Commission is directed to cause personal service of this order to be made on respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 4th day of JANUARY, 1972

[Signature]  
 Chairman

[Signature]  
 William J. [unclear]

[Signature]  
 Vernon L. [unclear]

[Signature]  
 Commissioners