

ORIGINAL

Decision No. 79871

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into
the rates, rules, regulations, charges,
allowances, and practices of all common
carriers, highway carriers and city
carriers relating to the transportation
of any and all commodities between and
within all points and places in the
State of California (including, but
not limited to, transportation for
which rates are provided in Minimum
Rate Tariff No. 2).

Case No. 5432
Petition for Modification
No. 674
(Filed November 9, 1971)

Jess J. Butcher and William M. Larimore, for
California Manufacturers Association, petitioner.
J. C. Kaspar, H. F. Kollmyer and A. D. Poe, Attorney
at Law, for California Trucking Association,
protestant.
R. M. Zaller, for Continental Can Co., Inc., interested
party.
Gary E. Haas, for the Commission staff.

O P I N I O N

Minimum Rate Tariff 2 (MRT 2) contains statewide minimum rates for the transportation of general commodities by highway carriers. Said tariff also provides that the specific minimum rates contained therein alternate and combine with the lowest common carrier rate for transportation of the same commodity between the same points (Items 200 through 230). Items 240 and 241 provide that in the event a rate of a common carrier is used under Items 200 through 230 to construct a rate for highway transportation, and such rate does not include accessorial services performed by the highway carrier, additional charges set forth in said items shall be added. Items 240 and 241 provide that no additional charge shall be assessed when the shipment is loaded and/or unloaded by the consignor and/or consignee with power equipment furnished and used without expense to

the carrier, and when no services are performed by carrier personnel. A charge of 4-1/2 cents per 100 pounds must be assessed when the shipment is loaded or unloaded under the circumstances described in paragraph 2 of Item 240; and a charge of 6-1/2 cents per 100 pounds must be assessed when the carrier's employee participates in the physical loading or unloading of the shipment, or stacks merchandise or removes merchandise from, or places merchandise on, pallets, as more specifically provided in paragraph 3 of Item 241.

In this petition California Manufacturers Association (CMA) seeks the amendment of Item 240 of MRT 2 with respect to the circumstances under which the 4-1/2 cent charge must be applied. Public hearing was held and the matter submitted before Examiner Mallory on January 28, 1972, in San Francisco. California Trucking Association (CTA) opposed the relief sought. The Commission staff urged that the petition be granted.

The provisions of Item 240 specifically in issue are the following:

- "2. A charge of 4 1/2 cents per 100 pounds shall be assessed on the weight on which transportation charges are determined when the bill of lading is so annotated to indicate that the shipment was loaded or unloaded from the carrier's equipment under one of the following circumstances:
- (a) By the consignor or consignee by use of power equipment, as described in Item 11, furnished by the consignor or consignee without expense to the carrier. Physical assistance of a single carrier employee is restricted to work within or on carrier's equipment and does not include services subject to Paragraph 3(a) or any assistance in the actual loading or unloading operation."

The petitioner alleges that the clause "or any assistance in the actual loading or unloading operation" contained in paragraph 2(a) of Item 240 has caused uncertainties in the application of the accessorial charges contained therein; that, without this clause,

paragraph 2(a) would stand by itself as a complete and more comprehensive tariff item; and that removal of this clause from paragraph 2(a) would serve to clarify and simplify the intent and application of the specified accessorial charge, and to remove doubt and confusion in the minds of shippers and carriers. Petitioner proposes that the aforementioned clause be deleted from the tariff item.

Evidence to support petitioner's proposal was presented by a traffic consultant. The witness testified substantially as follows:

Decision No. 66981, dated March 17, 1964 (62 Cal. P.U.C. 499) established the following provision in MRT 2:

"(1) For either loading or unloading of carrier's equipment:

(a) 2¢ per 100 pounds assessed on the weight on which transportation charges are computed when the shipment is loaded into or unloaded from the carrier's equipment by the consignor or consignee with the physical assistance of a single carrier employee (either a driver or a helper) by use of power equipment, as described in Item No. 11, furnished by the consignor or consignee without expense to carrier, provided the Shipping Document (Freight Bill) issued pursuant to Item No. 255 indicates that the shipment was loaded and/or unloaded under said circumstances (see Notes 1, 2, 3 and 4);..."

The Commission's Transportation Division in its Informal Ruling No. 127-B, dated November 18, 1964, interpreted the term "physical assistance" as follows:

"The 'physical assistance' referred to in connection with the 2-cent charge is any physical assistance whatsoever, however slight or however substantial, rendered in the loading or unloading operation. For example, the services of tying or untying tarpaulins and fastening or releasing binder chains do not constitute such physical assistance, because these services precede or follow the actual loading or unloading. Similarly, re-spotting the vehicle during loading or unloading is not such a physical assistance because it is not rendered in the actual loading or unloading operation. On the other hand,

such assistance as pushing pallets over rollers, positioning pallets with a hook or rope, and fastening or releasing slings, is physical assistance in the loading or unloading operation. Any handling by a carrier employee including hand-stacking within the body of a truck whether prior or subsequent to the transportation of loading pallets into or from within the body of the truck by the consignor or consignee with power equipment furnished by the consignor or consignee is physical assistance in loading or unloading by use of power equipment within the meaning of paragraph (1)(a) of Item No. 240, and is subject to the 2-cent charge."

Item 240 was subsequently amended by Decision No. 71553, dated November 9, 1966 (66 Cal. P.U.C. 357) to substitute the following:

- "2. A charge of 3 cents per 100 pounds shall be assessed on the weight on which transportation charges are determined when the Shipping Document is so annotated to indicate that the shipment was loaded or unloaded from the carrier's equipment under one of the following circumstances:
- (a) By the consignor or consignee by use of power equipment, as described in Item No. 11, furnished by the consignor or consignee without expense to the carrier. Physical assistance of a single carrier employee is restricted to work within or on carrier's equipment and does not include services subject to Paragraph 3(a) or any assistance in the actual loading or unloading operation.
 - (b) By use of carrier's pneumatic equipment with or without assistance of carrier employee.
 - (c) By use of a roller conveyor when said conveyor is built into and is an integral part of carrier's equipment, and shipment is placed onto or removed from said conveyor by consignor or consignee without expense to the carrier."

The tariff consultant testified that it was the intent under Decisions Nos. 66981 and 71553 that the charge of 3 cents (now 4-1/2 cents) be assessed in the circumstances when van-type equipment is furnished by the carrier, the commodity transported is

loaded on pallets, the consignor brings the loaded pallets to the tailgate of the van or the consignee removes the loaded pallets from the tailgate with power equipment, and the carrier's employee positions the loaded pallets in the van with the use of a hand jack or pallet jack.

The Commission interpreted the amended provisions of Items 240 and 241 in Yale Freight Lines, Inc., et al. (70 Cal. P.U.C. 142) as follows (at pages 147 and 148):

"As explained by the superintendent and by the representative, the loading at Miller Brewing Co. and the unloading at Ferrari of the beer shipments in question were performed by Miller or Ferrari employees with power equipment between the back end of the van and the plant floor and by Yale's driver with a hand jack between the back end and forward part of the van. Paragraph 3 of Item 241 of Minimum Rate Tariff No. 2 provides that when a shipment, which is loaded and/or unloaded in this manner, is rated under alternative common carrier rates which do not include the services of loading and unloading, an additional charge of five cents per 100 pounds each shall be assessed for the loading and/or unloading. In computing the lowest lawful minimum charge for the beer shipments, the staff has applied alternative common carrier rates, and in each instance where the alternative rate did not include the services of loading and unloading, the staff has applied the five-cent charge for loading at Miller and the five-cent charge for the unloading at Ferrari as required by the aforementioned tariff rule.

"Based on a review of the evidence, we are of the opinion that Yale should be directed to collect the undercharges found herein and that a fine in the amount of the undercharges should be imposed on said respondent."

It is the position of CMA that the original intent of the framers of the provisions contained in paragraph 2 of Item 240 that the lesser charge in this paragraph (rather than the 6-1/2 cent charge in paragraph 3) would apply to the situation where palletized shipments are transported in van-type equipment, the pallets are placed on, and removed from, the vehicle by the consignor and

consignee with forklifts and the carrier's employee positions the pallets in the van. The witness pointed out that the aforementioned service is similar to the service described in paragraph 2(c) of Item 240 (supra), except that hand jacks rather than roller conveyors are used. The witness stated that the entire loading and unloading process for palletized shipments can be accomplished by the consignor or consignee when flatbed equipment is furnished by the carrier (except for tying down and tarping), but that the assistance of the carrier's employee is necessary whenever van-type equipment is used because forklifts cannot enter the van and the pallets must be positioned in the van either with hand jacks or roller conveyors.

CTA opposed the granting of the petition. It argued that it was not the intent of CTA that the provisions of paragraph 2 be applied in the manner described by the witness. CTA believes that the proper charge results in the interpretation expressed in Yale Freight Lines, Inc. (supra). It is CTA's position that paragraph 2(a) should be applied in such manner until a showing is made that the charges in paragraph 2 are compensatory for the services involved, and that the record herein contains no basis for such finding.

Discussion

The Commission recognized in prior decisions establishing or adjusting charges in Items 240 and 241 of MRT 2 that the level of charges set forth in said items are not sufficient to cover the full costs to carriers of performing the accessorial services to which said charges relate (Decision No. 71553, 66 Cal. P.U.C. 357, at page 362). None of the present charges are fully compensatory; therefore, it should not be incumbent upon petitioner to show that any specific charge it proposes herein will be compensatory.

The service to be performed by carrier's personnel requires less effort and is less time consuming than the services to which paragraph 3 charges now apply. Moreover, the service to be performed by carrier personnel is similar to the service performed by said personnel when roller conveyors are used to position pallets in a van. Therefore, it appears that the charge in paragraph 2 would be more appropriate to the service in question than the charges in either paragraph 1 or paragraph 3 of Items 240 and 241.

The intent of petitioner's proposal can be accomplished by the addition of a specific description of the services involved, rather than by the amendment proposed.

Findings and Conclusion

1. Petitioner seeks amendment of paragraph 2(a) of Item 240 of MRT 2 to provide that the charges in paragraph 2 of Item 240 will apply to shipments on pallets transported in van-type equipment when the property is loaded and unloaded from the tailgate of the equipment by the consignor and/or consignee with power equipment, and the carrier's employee positions the loaded pallets in the van.

2. Of the three levels of service described in paragraphs 1, 2 and 3 of Items 240 and 241, the services performed by the carrier's employees under conditions described in finding 1 above appeared to be most similar to services listed in paragraph 2 for which a charge of 4-1/2 cents per 100 pounds is provided.

3. The amendment of paragraph 2 as provided in the order which follows will result in reasonable and nondiscriminatory charges for the services to be provided thereunder. No increases in charges will result from said amendment.

The Commission concludes:

1. The decision in Yale Freight Lines, Inc., et al., 70 Cal. P.U.C. 142, correctly interprets the current provisions of Items 240 and 241 of MRT 2.

2. Amendment of said items to authorize the assessment of the 4-1/2 cent charge for positioning of palletized shipments in van-type equipment by carrier's employee will satisfy the request of petitioner and should be authorized.

3. MRT 2 should be amended as provided in the order which follows.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 2 (Appendix D to Decision No. 31606, as amended) is further amended by incorporating therein, to become effective May 13, 1972, Thirtieth Revised Page 26, attached hereto and made a part hereof. ✓

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to Decision No. 31606, as amended, are hereby authorized to establish in their tariffs the amendments necessary to conform with the further adjustments ordered herein.

3. Tariff publications authorized to be made by common carriers as a result of the order herein shall be filed not earlier than the effective date of this order and may be made effective not earlier than the tenth day after the effective date of this order, and may be made effective on not less than ten days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the minimum rate tariff pages incorporated in this order.

4. Common carriers, in establishing and maintaining the rates authorized hereinabove, are hereby authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

5. In all other respects said Decision No. 31606, as amended, shall remain in full force and effect.

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6. To the extent not granted herein, Petition No. 674 in Case No. 5432 is denied.

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

Dated at San Francisco, California, this 27th
day of APRIL, 1972.

[Signature]
Chairman
William Symon
[Signature]
James L. Stinger
[Signature]
Commissioners

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">ACCESSORIAL SERVICES NOT INCLUDED IN COMMON CARRIER RATES (Items 240 and 241)</p> <p>In the event under provisions of Items 200 to 230, inclusive, a rate of a common carrier is used in constructing a rate for highway transportation, and such rate does not include accessorial services performed by the highway carrier the following charges for such accessorial services shall be added (except as otherwise provided in Item 241 and in connection with individual rates):</p> <ol style="list-style-type: none"> 1. No additional charge shall be assessed when the shipment is loaded into and/or unloaded from the carrier's equipment and the bill of lading issued pursuant to Item 255 indicates that the shipment was loaded and/or unloaded under one of the following circumstances: <ol style="list-style-type: none"> (a) By gravity: <ol style="list-style-type: none"> (1) From or into dump or hopper trucks or trailers other than pneumatic equipment. (2) On truckload shipments of pulpboard in rolls weighing not less than 750 pounds each. (3) On shipments of lumber unloaded by the use of rollers. (b) By the consignor and/or consignee with power equipment, as described in Item 11, furnished and used without expense to carrier, and when no services are performed at carrier expense, or by carrier personnel. (c) By the consignor and/or consignee when the carrier's equipment is a trailer or semitrailer left for loading and/or unloading without the presence of carrier's employees. 2. A charge of 4½ cents per 100 pounds shall be assessed on the weight on which transportation charges are determined when the bill of lading is so annotated to indicate that the shipment was loaded or unloaded from the carrier's equipment under one of the following circumstances: <ol style="list-style-type: none"> (a) By the consignor or consignee by use of power equipment, as described in Item 11, furnished by the consignor or consignee without expense to the carrier. Physical assistance of a single carrier employee is restricted to work within or on carrier's equipment and does not include services subject to Paragraph 3(a) or any assistance in the actual loading or unloading operation. (b) By use of carrier's pneumatic equipment with or without assistance of carrier employee. (c) By use of a roller conveyor when said conveyor is built into and is an integral part of carrier's equipment, and shipment is placed onto or removed from said conveyor by consignor or consignee without expense to the carrier. *(d) When the shipment is transported on pallets in van-type equipment and the shipment is placed onto or removed from the van by use of power equipment furnished by the consignor and/or the consignee, and the loaded pallets are positioned in the van by carrier's employee by use of a hand jack or pallet jack. <p style="text-align: center;">(Continued in Item 241)</p>	<p style="text-align: right;">240</p>
<p>Change) Decision No. Addition)</p> <p style="text-align: center; font-size: 2em;">79871</p>	
Correction	EFFECTIVE
	ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA