

ORIGINAL

Decision No. 80006

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 MOROSA BROS.
TRANSPORTATION CO., a California
corporation, dba MOROSA BROS. TRANS-
PORTATION CO. and LYNN TRUCKING;
BIDART BROS., INC., a California
corporation; KERN LIVESTOCK SUPPLEMENT
CO., INC., a California corporation.

Case No. 9330
(Filed February 15, 1972)

Robert S. Crossland, Attorney at Law, for
Morosa Bros. Transportation Co., respondent.
James Cherry, Attorney at Law, and E. H. Hjelt,
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 Morosa Bros. Transportation Co., a California corporation, doing business as Morosa Bros. Transportation and Lynn Trucking (Morosa), for the purpose of determining whether said respondent violated Sections 3664, 3668 and 3737 of the Public Utilities Code in connection with for-hire transportation performed for Bidart Bros., Inc. (Bidart) and Kern Livestock Supplement Co. (Kern).

Public hearing was held before Examiner Mooney in Bakersfield on March 22, 1972, on which date the matter was submitted.

Morosa has been issued radial highway common carrier, highway contract carrier and dump truck carrier permits and a certificate of public convenience and necessity to operate as a cement carrier. During the period covered by the staff investigation referred to hereinafter, Morosa had a terminal in Bakersfield; employed 22 drivers, one mechanic and three office personnel; operated nine trucks,

23 tractors and 66 trailers; and had all applicable minimum rate tariffs and distance tables, together with all supplements and additions thereto. The gross operating revenue of Morosa for the fourth quarter of 1970 and for the year 1971 was \$248,661 and \$1,102,913, respectively.

A representative of the Commission's staff visited Morosa's place of business in Bakersfield on March 22, 1971 and several additional days and reviewed its transportation records for the period October 1, 1970 through December 31, 1970. He testified that he made true and correct copies of freight bills and underlying documents relating to ten shipments of animal feed and hay for Bidart from Bakersfield and the Sacramento Area to the Willow Creek Ranch, located 33.4 actual miles northwest of Alturas, and five shipments of mineral mixtures and animal feed for Kern from the Bakersfield Area to various consignees and that all of said photocopies are in Exhibit 2. The representative pointed out that each of the ten Bidart freight bills show the Willow Creek Ranch to be in Oregon. He testified, however, that according to supplemental documents in Exhibit 2, said destination is in California; that a member of the Commission's Redding District Office personally visited the ranch and determined it to be in California; and that when Morosa was informed of this, said respondent agreed that if the investigation by the Redding District Office so disclosed, the Bidart shipments were delivered in California.

A rate expert for the Commission staff testified that he took the set of documents in Exhibit 2, together with the supplemental information testified to by the representative, and formulated Exhibits 3 and 4 which show the rate and charge assessed by Morosa, the minimum rate and charge computed by the staff and the amount of undercharge alleged by the staff for the Bidart and Kern shipments, respectively. He stated that the total amount of the undercharges shown in Exhibits 3 (Bidart) and 4 (Kern) are \$2,209.85 and \$143.41,

respectively, and that the total undercharge in both exhibits is \$2,353.26. In answer to cross-examination by Morosa's attorney, the rate expert stated that there were no alternative or other rates that would have produced lower charges than the minimum rates he had applied to the transportation in issue.

The president of Morosa testified that he has been in the trucking business since 1946; that initially Morosa hauled livestock only but has diversified its hauling to include cement and animal feed; and that any rate errors that might have occurred were inadvertent and unintentional.

With respect to Exhibit 3, the president testified as follows: Morosa has hauled livestock from the Willow Creek Ranch for many years; the road from Alturas to the ranch is a rough, dirt logging road; the ranch provides accommodations for Morosa's drivers and repairs for its equipment without charge; during the period covered by said exhibit (October and November 1970), the ranch had acquired additional livestock and needed hay and animal feed to supplement the feed in the meadows; Morosa transported the ten shipments on livestock trucks as an accommodation to Bidart and has not prior or subsequent thereto transported any shipments to the ranch; the trucks would have gone into the ranch empty otherwise; no other carrier would have performed the transportation because of the hazardous road conditions between Alturas and the ranch; the shipments were unloaded by ranch employees; Morosa made money on the hauls; although there are no rate errors in connection with the livestock transportation from the ranch, he was of the opinion that the ranch was also in Oregon and that the ten shipments in issue were exempt from the Commission's rate jurisdiction; had he known it was entirely in California, he would have either not performed the transportation or charged the applicable minimum rates.

As to Exhibit 4, the president asserted that the undercharges for the five shipments shown therein were due to technical errors in applying bulk rates to sacked shipments of animal feed and mineral mixture.

We agree with the rates and undercharges computed by the staff in Exhibits 3 and 4. The only matter requiring our consideration is the amount of punitive fine that should be imposed. The staff recommended a \$1,500 punitive fine. In this regard, staff counsel pointed out that Morosa has hauled livestock from the Willow Creek Ranch for many years and has applied California minimum rates to said transportation; that it is apparent, therefore, that said respondent was aware that the Exhibit 3 transportation was subject to the Commission's minimum rates; and that the rate errors in said exhibit were intentional. Morosa's attorney reiterated the testimony of its president and argued that the facts and circumstances herein do not warrant the imposition of any punitive fine whatsoever.

Based on a review of the entire record, we are of the opinion that a punitive fine in the amount of \$500 should be imposed on Morosa. While the evidence does establish that the transportation in issue for Bidart was an isolated instance of ten shipments only; nonetheless, Morosa has transported livestock shipments from the Willow Creek Ranch for a substantial period of time prior thereto and should have known the ranch was in California. It is the responsibility of a permit carrier to observe and abide by minimum rate tariffs. The law is settled that neither negligence nor inadvertence constitutes a defense to a failure to collect the proper tariff charge. In addition to the punitive fine, Morosa will be directed to collect the undercharges found herein and to cease and desist charging less than minimum rates, and a fine in the amount of the undercharges will be imposed on said respondent.

The Commission finds that:

1. Morosa operates pursuant to radial highway common carrier, highway contract carrier and dump truck carrier permits.
2. During the period investigated herein, Morosa had all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each.

3. The destination at Willow Creek Ranch for the transportation covered by Exhibit 3 (Bidart) was in California.

4. The minimum rates and charges computed by the staff for the transportation covered by Exhibits 3 (Bidart) and 4 (Kern) are correct.

5. Morosa charged less than the lawfully prescribed minimum rates and charges in the instances set forth in Exhibits 3 (Bidart) and 4 (Kern) resulting in undercharges in the total amounts of \$2,209.85 and \$143.41, respectively. The total of the undercharges in both exhibits is \$2,353.26.

The Commission concludes that:

1. Morosa violated Sections 3664, 3668 and 3737 of the Public Utilities Code.

2. Said respondent should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$2,353.26, and in addition thereto said respondent should pay a fine pursuant to Section 3774 of said Code in the amount of \$500.

3. Said respondent should be directed to cease and desist from charging less than applicable minimum rates and charges.

The Commission expects that Morosa 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 into the measures taken by said respondent and the results thereof. If there is reason to believe that either said 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. Morosa Bros. Transportation Co., a California corporation, doing business as Morosa Bros. Transportation and Lynn Trucking, shall pay a fine of \$2,853.26 to this Commission on or before the fortieth day after the effective date of this order.

2. Said respondent 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.

3. Said respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and in the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain 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 undercharges remaining to be collected, 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.

4. Said respondent 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Morosa Bros. Transportation Co. 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 2nd day of MAY, 1972.

I abstain
William Symons, Jr.
Commissioner

[Signature]
Chairman
[Signature]
[Signature]
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.