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Decision No. 80080

ORIGINAL

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. 686
(Filed January 31, 1972)

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 property in the City and County of San Francisco, and the Counties of Alameda, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma.

Case No. 5441
Petition for Modification
No. 240
(Filed January 31, 1972)

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 property within San Diego County (including transportation for which rates are provided in Minimum Rate Tariff No. 9-B.

Case No. 5439
Petition for Modification
No. 155
(Filed January 31, 1972)

O P I N I O N

Petitioners involved in this proceeding are A & B Garment Delivery, Garment Carriers, Inc., A & B Garment Delivery of San Francisco, and Edward T. Molitor, doing business as Standard Truck Line. They will be referred to hereinafter, respectively, as A & B,

GC, A&B/SF and Standard. All of the petitioners operate as highway common carriers in the transportation, among other things, of garments, clothing and wearing apparel, when transported on garment hangers. A & B operates in the Los Angeles Basin area, GC between the Los Angeles area and San Francisco Bay area, A&B/SF in the territory encompassed by Santa Rosa, Sacramento, Modesto, San Jose and San Francisco and Standard between Los Angeles and San Diego and within the San Diego area.

By this petition, authority is sought under Section 452 of the Public Utilities Code to publish rates and rules for the transportation of garments, clothing and wearing apparel on garment hangers which deviate from the minimum rates published in Minimum Rate Tariffs 1-B, 2, 9-B and 19. Authority is also sought to depart from the provisions of Article XII, Section 21, of the Constitution of the State of California, and Section 460 of the Public Utilities Code, to the extent necessary to publish the rates in question.

Petitioners state that the rates and rules in issue in this proceeding are now published in various tariffs on file with the Commission.^{1/} They point out that these provisions have been in effect continuously since 1942 when A & B initially published them pursuant to Decision No. 35452 of June 9, 1942 in Application No. 24519, which granted said carrier a highway common carrier operative authority and authorized the publication of a tariff attached to the aforesaid application. The petition further states that the other

^{1/} A & B Garment Delivery Local Freight Tariff No. 2, Cal. P.U.C. No. 1; Garment Carriers, Inc., Local Freight Tariff No. 1, Cal. P.U.C. No. 2; Garment Carriers, Inc., Joint Freight Tariff No. 1, Cal. P.U.C. No. 3; Pacific Motor Tariff Bureau Local and Express Tariff No. 8-A, Cal. P.U.C. No. 1; Edward T. Molitor, dba Standard Truck Line, Local Freight Tariff No. 1, Cal. P.U.C. No. 1; and Edward T. Molitor, dba Standard Truck Line, Joint Freight Tariff No. 2, Cal. P.U.C. No. 2.

petitioners were granted authority for highway common carrier operative rights and similar tariff publications by various decisions of the Commission.^{2/} The petition alleges that after these rates were initially published, they have only been modified pursuant to various orders of the Commission. In each of these decisions, petitioners state, the Commission found the rates in issue to be reasonable. The petition set forth three samplings of Commission findings as follows:

1. Decision No. 38468 of December 10, 1945, in Application No. 26633, found that the rates to be assessed for A & B's service were: "The proposed rates 'are 15 cents per bag plus 1 cent per pound, but not less than 15 cents per bag plus 2 cents per garment, for all garments except women's blouses or shirts which shall be 1 cent each'." (Sheet 4)

2. Decision No. 57896 of January 20, 1959, in Application No. 40031, which considered the rates and service of A&B/SF for hanging garment shipments stated as follows:

"Applicant is presently authorized to apply the rates, rules and regulations set forth in its Local Freight Tariff No. 3 to shipments between points it was originally authorized to serve pursuant to Decision No. 48808.

"As justification for the authority sought, applicant alleges that its operations are of a specialized nature; that the rates and regulations prescribed in the Commission's minimum rate tariffs are not suited to the hanging-garment portion of its service; and that no objection has ever been received by the applicant, nor has any protest been filed with the Commission to the tariff of A & B Garment Delivery since its original publication.

"After consideration the Commission is of the opinion that the proposed rates are reasonable." (Sheet 2.)

^{2/} Standard Application No. 34430, authority granted by Decision No. 47161, dated August 29, 1953; GC Application No. 34201, authority granted by Decision No. 48808, dated July 7, 1953; A&B/SF Application No. 34201, authority granted by Decision No. 48808, dated July 7, 1953.

3. Decision No. 58729 of July 7, 1959, in Case No. 5432 (Petition No. 147), found as follows relative to the hanging garment rates:

"The rates here in issue constitute, under appropriate authority, deviations from the Commission's outstanding minimum rate orders. Petition for Modification No. 147 is a request to continue such deviation, but at higher rates than those now applicable."

"... After careful consideration the Commission is of the opinion and hereby finds that the sought rate and certificate relief have been justified."
(Sheets 6 and 7.)

In Appendix C attached to the petition is set forth a list of Commission proceedings involving the four petitioners in which the rates and/or propriety of the rules and regulations governing their applicability were considered.

The petition alleges that due to the deletion of the "liberalized packaging rule" from the Commission's minimum rate tariffs, a question has arisen as to whether petitioners now have permission to publish the rates and rules previously authorized for garments on hangers which deviate from those in the minimum rate tariffs of the Commission.^{3/} It states that to resolve this issue and to obtain authority to continue to publish the rates and rules here in issue, if such authorization is required, the instant petition has been filed. Petitioners point out that the deletion of the liberalized packaging rule from the minimum rate tariffs made the packaging provisions of the National Motor Freight Classification (NMFC) applicable to all shipments transported in California. The application of these provisions resulted in higher ratings being

^{3/} The "liberalized packaging rule" was deleted from Minimum Rate Tariff 1-B, Item 330, Minimum Rate Tariff 5, Item 210, Minimum Rate Tariff 19, Item 270, and Minimum Rate Tariff 9-B, Item 310, on December 31, 1970, by Decision No. 75408, et al. and from Minimum Rate Tariff 2, Item 300, by Decision No. 78096, on April 30, 1971.

applicable to garments, clothing and wearing apparel on hangers. Attached to the petition as Appendix D are the opinions of two tariff experts setting forth the effect of the application of NMFC packing requirements. They show that the NMFC provides a rating of Class 400 for garments, clothing or wearing apparel on hangers. Petitioners allege that it would be unconscionable and unreasonable to require shippers and receivers of this traffic to pay such charges for this service. They assert that the Commission has found in various decisions that the rates published by them were reasonable for this specialized service, and that rates and rules developed by the carriers and the garment industry over a period of many years should be perpetuated and the publication of these rates and rules should be authorized as requested herein.

The petition states that the hanging garment service provided by petitioners requires specially trained and qualified drivers and platform men and terminal facilities and motor vehicles designed and constructed to properly route, handle, safeguard, temporarily store and transport the hanging merchandise, which general freight and other motor carriers do not possess or provide. They assert that because of the manner in which this merchandise is distributed by petitioners, the clothing industry of California has received substantial benefits therefrom. Petitioners point out that through the service provided by them, garments and wearing apparel are shipped by manufacturers and sold to retail customers without the necessity of being packed, unpacked, pressed or cleaned. The petition states that petitioners carry approximately 95 percent of all hanging garment shipments which are transported by for-hire motor carriers within California.

The rates here in issue are published for two different methods of shipment, one being when transported in bags furnished by the carriers or when tendered for shipment on hangers loose, other than in bags furnished by the carriers. The rates and rules currently in effect are set forth in detail in Appendix A attached to the petition.

Copies of the petition were served on various parties, including the California Trucking Association. The petition was also listed on the Commission's Daily Calendar of February 1, 1972. A protest has been received from International Transit Co.

In brief, petitioners were authorized by the Commission to engage in a specialized type of transportation as highway common carriers at rates which were different from the minimum rates prescribed for the commodities involved. The rates, in fact, were stated in a different unit of measurement than the minimum rates. The charges at the applicable minimum rates for the commodities in packages generally were lower than those maintained by petitioners for transportation of the articles loose on hangers or in bags. Because of the "liberalized packing rule" in the minimum rate tariffs which in effect made the rates for packaged articles the minimum rates for the transportation performed by petitioners no issue was ever raised as to whether petitioners' rates were less than the established minimum rates. With the cancellation of the "liberalized packing rule" some of the minimum rates exceeded the rates maintained by petitioners. This has raised the question in the minds of petitioners of whether the rates they have maintained over many years and which on many occasions have been reviewed and approved by the Commission were made unlawful by reason of the cancellation of the "liberalized packing rule". By this petition they ask that said question be laid to rest by a specific authorization from the Commission permitting them to do in the future that which the Commission has previously authorized them to do. No increase or reductions in rates are involved herein.

The foregoing compels the following findings of fact:

1. For many years petitioners have published under authority of the Commission the rates which are maintained in their tariffs.
2. The Commission has not only found such rates to be reasonable but has approved them.

3. In its Decision No. 76096 and other decisions wherein the "liberalized packing rule" was deleted from the minimum rate tariffs, the rates of petitioners were not specifically considered.

From the foregoing we conclude that petitioners are authorized and have been authorized to charge the rates specified in their tariffs. Petitioners have requested a decision of the Commission which will set forth the authorities for them to depart from the provisions of the established minimum rates. It is desirable that such be done. In so doing, the authorities will be limited consistent with the foregoing findings.

The protest and request for hearing filed by International Transit Co. is stated to be "based on the Rules and Regulations of Petitioners' tariffs and the level of charges produced by those Rules and Regulations, as presented in the application". Inasmuch as this order merely continues the present rules, regulations and level of charges of petitioners which have been authorized and approved by the Commission, there appears to be no grounds for a hearing and the request therefor will be denied.

O R D E R

IT IS ORDERED that:

1. Petitioners A & B Garment Delivery, Garment Carriers, Inc., A & B Garment Delivery of San Francisco and Edward T. Molitor, doing business as Standard Truck Line, are authorized to depart from the rates and rules in Minimum Rate Tariffs 1-B, 2, 9-B and 19, and in reissues thereof, in the publication and maintenance of rates in their tariffs and schedules of rates governing the transportation of garments, clothing and wearing apparel, when transported on garment hangers, as authorized by the Commission in the following decisions:

A & B Garment Delivery - Decision No. 62337,
dated July 25, 1961, in Application No. 42708,
as amended by Decision No. 78330, dated
February 22, 1971, in Application No. 52284.

Garment Carriers, Inc. - Decision No. 79291,
dated November 2, 1971, in Application No. 52820.

A & B Garment Delivery of San Francisco -
Decision No. 61999, dated May 16, 1961, as
amended by Decision No. 63148, dated January 23,
1962, in Application No. 42840, as amended by
Decision No. 68645, dated February 24, 1965, in
Application No. 46320, and Decision No. 78287,
dated February 9, 1971, in Application No. 52283.

Edward T. Molitor, doing business as Standard Truck
Line - Decision No. 64482, dated October 30, 1962,
in Application No. 44585.

2. Petitioners shall comply with the requirements of General Order No. 80-A by making reference to the foregoing authorities in their respective tariffs in connection with the items involved; and tariff publications authorized to be made as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than five days after the effective date hereof on not less than five days' notice to the Commission and to the public.

3. Petitioners are hereby authorized to depart from the long- and short-haul provisions of Section 460 of the Public Utilities Code, and Article XII, Section 21, of the Constitution of the State of California, to the extent necessary to exercise the authority granted herein.

4. The authority herein granted shall expire unless exercised within ninety days after the effective date of this order.

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5. International Transit Co.'s request for hearing is denied.

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

Dated at San Francisco, California, this 17th day of MAY, 1972.

William J. ... Chairman
...
Vernon L. Sturgeon
... Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.