

Decision No. 80260**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 R.T.I., INC.,
a California corporation; and
J. R. Meyer Co. 1/

Case No. 9336
(Filed February 25, 1972)

Milton W. Flack, Attorney at Law, for R.T.I., Inc.,
respondent.

Elmer Sjostrom, Attorney at Law, and E. Hietl, 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 R.T.I., Inc., a California corporation, for the purpose of determining whether said respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging less than prescribed minimum rates in connection with the transportation of fresh frozen, ground, scrap fish for L. R. Meyer Co., and whether R.T.I., Inc., violated Section 3705 of said code by refusing to make available for inspection by authorized Commission employees all accounts, records and memoranda kept or required to be kept by said respondent.

Public hearing was held before Examiner Mooney in Los Angeles on April 6, 1972, on which date the matter was submitted.

R.T.I., Inc., operates pursuant to a radial highway common carrier permit. At the time of the staff investigation referred to hereinafter, said respondent had terminals in Los Angeles and Eddyville, Oregon; had three office employees and employed

2/. The correct name of respondent shipper is L. R. Meyer Co.

15 drivers; operated six tractors and trailers and three bobtail trucks; and had been served with Minimum Rate Tariff 2 and Distance Table 7, together with all supplements and additions to each. The gross operating revenue of R.T.I., Inc., for the year 1971 was \$671,243.

A representative of the Commission staff visited the place of business of R.T.I., Inc., in Los Angeles during July, 1971, and reviewed its records for the period March, April and May, 1971. R.T.I., Inc., stipulated that a staff rate statement, presented in evidence as Exhibit 3, showing undercharges of \$1,438.28 in connection with the transportation of seven shipments of fresh frozen, ground, scrap fish by said respondent for L. R. Meyer Co. from Seaside-Sand City and Fields Landing to San Diego during the review period, was correct. The representative testified that the president and general manager of R.T.I., Inc., had informed him that his company had purchased a tractor from L. R. Meyer Co. and had credited the charges billed for all transportation for said shipper against the amount owed on said purchase. The witness stated that he requested the president and general manager to furnish him with a copy of the bill of sale and purchase account for the tractor for his review on August 20, 1971, and on numerous other subsequent dates; that each time he was informed that they were not available or were being worked on or were at the office of the carrier's attorney; and that as of the date of the hearing herein they had not been made available to the staff.

The president and general manager of R.T.I., Inc., testified that it had been his understanding that the scrap fish shipments in Exhibit 3 were ratable as tankage and he had rated them accordingly; that upon receipt of a copy of Exhibit 3, he issued balance due bills to L. R. Meyer Co. on March 29, 1972, for the undercharges shown therein; and that photocopies of said rebilling are included in Exhibit 4. He stated that the tractor,

a 1966 International diesel tractor, was purchased from L. R. Meyer Co. in July, 1970, for \$16,000; that after the payment of four checks totaling \$2,732.90 towards the purchase price, L. R. Meyer Co. agreed in September, 1970, to accept transportation services in payment of the balance; that the amount remaining to be paid is \$2,798.59; that the registration for the tractor shows L. R. Meyer as the legal owner and R.T.I., Inc., as the registered owner. The witness explained that when the staff representative requested a copy of the bill of sale for the tractor, it was at the office of another attorney for R.T.I., Inc., and had been misplaced and was not found until several months ago. A photocopy of said document, which is an informal memorandum signed by L. R. Meyer only, was presented in evidence as Exhibit 5 by the president and general manager. He stated that he did not recall the representative requesting the account covering the purchase; that the only records he maintained regarding this were his copies of the L. R. Meyer Co. freight bills; and that they would be made available for review by the staff anytime at their request.

Staff counsel recommended that a fine in the amount of the undercharges shown in Exhibit 3 and an additional punitive fine of \$1,500 be imposed on R.T.I., Inc. In addition, he recommended that R.T.I., Inc., be directed to review its records for all hauling performed for L. R. Meyer Co. subsequent to the purchase of the tractor and to collect all undercharges, including those shown in Exhibit 3, disclosed by said review from said shipper.

The attorney for R.T.I., Inc., stated that he agreed with the staff recommendation regarding the record review and collection of undercharges by his client. He argued, however, that the facts and circumstances herein do not warrant the imposition of any fines whatsoever on R.T.I., Inc. In this regard, he asserted that the undercharges were due to a misunderstanding by his client as to the correct rating to be applied; that his client had been cooperative

with the staff and had attempted to locate a copy of the bill of sale which had been misplaced; and that the staff had not clearly defined the records it requested.

Based on a review of the entire record, we are of the opinion that a fine in the amount of the undercharges shown in Exhibit 3 and a punitive fine of \$500 should be imposed on R.T.I., Inc.; that the staff recommendation regarding record review and collection of undercharges by R.T.I., Inc., should be adopted; and that said respondent should be directed to cease and desist violating the minimum rates and offsetting tractor purchase payments against transportation charges.

As to the cease and desist directive regarding offsetting, it is a general rule of transportation law that unless specifically authorized by applicable tariff provisions, money owed by a carrier to a shipper for any purpose whatsoever may not be offset against tariff charges for transportation and related services owed by the shipper to the carrier. Minimum Rate Tariff 2, the applicable tariff herein, makes no provisions for such offsets. In the circumstances, amounts owed by R.T.I., Inc., to L. R. Meyer Co. for tractor payments cannot be offset against transportation charges owed by said shipper to said carrier. They must be handled as separate and distinct transactions. While technically the past offsets were improper, it is apparent that no useful purpose would be served by requiring R.T.I., Inc., to collect the transportation charges heretofore offset against the purchase price and no such directive will be issued. It would merely result in an exchange of the identical amount of money between the two respondents. Furthermore, no question has been raised on the record herein regarding the bona fide nature of the purchase transaction or the price involved.

No determination will be made herein that R.T.I., Inc., violated Section 3705 of the Public Utilities Code. We will accept, for the purposes of this proceeding, the explanation on behalf of said respondent that it was unable to locate its copy of the tractor

bill of sale until recently and did not understand what account record regarding the sale was requested. However, R.T.I., Inc., is placed on notice that Section 3705 requires it to make available for inspection all records maintained in connection with its business when requested to do so by Commission representatives and that such requests must be adhered to promptly. Furthermore, it is the duty and obligation of a carrier subject to said section to make a diligent search for any missing records that have been requested and to notify the staff immediately when they are located and to obtain any necessary clarification regarding the particular records requested if there is any uncertainty on its part regarding this.

The Commission finds that:

1. R.T.I., Inc., operates pursuant to a radial highway common carrier permit.
2. R.T.I., Inc., was served with Minimum Rate Tariff 2 and Distance Table 7, together with all supplements and additions to each.
3. The staff ratings and the resulting undercharges shown in Exhibit 3 are correct.
4. R.T.I., Inc., charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 3, resulting in undercharges in the total amount of \$1,438.28.
5. R.T.I., Inc., has issued balance due bills to L. R. Meyer Co. for the undercharges referred to in Finding 4.

The Commission concludes that:

1. R.T.I., Inc., violated Sections 3664, 3667 and 3737 of the Public Utilities Code.
2. R.T.I., Inc., should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,438.28, and in addition thereto, a fine pursuant to Section 3774 of said code in the amount of \$500.

3. R.T.I., Inc., should be directed to review its records for all transportation performed for L. R. Meyer Co. subsequent to July 1, 1970, and to collect all undercharges disclosed by said review, including those shown in Exhibit 3.

4. R.T.I., Inc., should be directed to cease and desist violating the minimum rates established by the Commission and offsetting, or allowing to be offset, transportation charges owed to it by L. R. Meyer Co. against money owed by it to said shipper.

The Commission expects that R.T.I., Inc., will proceed promptly, diligently and in good faith to pursue all reasonable measures to complete the record review and 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 complete the record review or collect the 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. R.T.I., Inc., shall pay a fine of \$1,938.28 to this Commission on or before the fortieth day after the effective date of this order.

2. R.T.I., Inc., shall review its records of all transportation performed for L. R. Meyer Co. between July 1, 1970, and the effective date of this order and shall take such action, including legal action, as may be necessary to collect the undercharges disclosed by said review, including those set forth in Exhibit 3, and shall notify the Commission in writing upon the consummation of such collections.

3. R.T.I., Inc., shall proceed promptly, diligently and in good faith to pursue all reasonable measures to complete the record review and collect the undercharges referred to in paragraph 2 of this order, and in the event this directive has not been fully complied with within 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 specifying the action taken to comply therewith, until all undercharges have been collected in full or until further order of the Commission.

4. R.T.I., 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 applicable minimum rates and charges prescribed by the Commission.

5. R.T.I., Inc., shall cease and desist offsetting, or allowing to be offset, transportation charges for services performed by it for L. R. Meyer Co. against money owed by it to said shipper.

The Secretary of the Commission is directed to cause personal service of this order to be made upon R.T.I., Inc. 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 L. R. Meyer Co. The effective date of this order, as to the latter respondent, shall be twenty days after completion of service by mail.

Dated at Los Angeles, California, this 18th day of JULY, 1972.

Vernon L. Sturgeon
President
William J. ...
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Commissioners