

Decision No. 80515

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 KENNETH R.)
 BARKER, doing business as)
 J. K. BARKER TRUCKING.)

Case No. 9362
 (Filed April 11, 1972)

Charlton A. Mewborn, Attorney at Law,
 for the respondent.
Walter H. Kessenick, Attorney at Law,
 and E. H. Hjelt, for the Commission
 staff.

O P I N I O N

This investigation was instituted on April 11, 1972, to determine whether respondent violated Sections 3575 and 3737 of the Public Utilities Code by engaging subhaulers without having a subhaul bond on file; failing to pay subhaulers within the time required by Item 94 of Minimum Rate Tariff 7 and by extending credit to shippers in excess of the maximum time specified in the applicable tariff.

Public hearing was held on May 3, 1972 in Los Angeles before Examiner Fraser.

Respondent holds permits as a radial highway common carrier and a dump truck carrier. He owns one ten-wheel dump truck and a Diesel tractor. He operates out of a single terminal in Carson, California, and has only one employee who is classified as a driver. His gross revenue for the calendar year 1971 totaled \$748,728.

The five staff exhibits were stipulated into evidence. The investigation covered transportation performed by respondent during the period from July 1st through October 31, 1971. Section I of Exhibit 5 includes evidence of 46 hauls where participating subhaulers were not paid for their services within the time period

specified in Item 94 of Minimum Rate Tariff 7. Section II of Exhibit 5 is composed of five freight bills which describe varied loads hauled by subhaulers during October of 1971. A staff witness testified that respondent's subhaul bond was canceled on October 2, 1971 and has never been reinstated; also that the transportation described in Section II of Exhibit 5 and 85 other hauls by subhaulers, were all performed after respondent's subhaul bond had been canceled. Section III of Exhibit 5 includes documents showing 19 instances wherein transportation was performed for three shippers during the months of May through September 1971, and that no payments for the continuing service had been received as of November 23, 1971.

Respondent testified as follows: He provided transportation for three shippers who had claims against a contracting business formerly owned by his father. He has never been in business with his father, but the shippers decided not to pay him until all debts claimed to be owed by his father were deducted from the bills owed for transportation service provided by the respondent. He continued to serve these shippers for several months because he was sure they would provide payment and all but one finally did. He has a suit for \$38,000 pending against the shipper who has not paid the transportation charges. Over \$100,000 was owing to him as of the date of the staff investigation. By May 3, 1972 it was reduced to \$70,000. He did not pay his subhaulers on time because he had not been paid and could not write checks on a nonexistent account. No one has complained about his service because subhaulers were paid as soon as he received a sufficient sum of money. He operated for an interval without knowing that his subhauler bond had not been renewed. The bond renewal application was mailed to him and he signed and forwarded it to his father who was to be a co-signer. The latter was out of town and neither signed nor returned the form. The bond thereupon lapsed and no one bothered to notify him. He stopped operating as soon as he discovered he had no bond and voluntarily turned in his permits.

The staff's closing argument included several recommendations which respondent agreed to accept. The staff also suggested that a punitive fine of \$1,000 be imposed. Respondent opposed the fine on the basis that the record does not justify the imposition of a penalty. It was emphasized that the alleged violations resulted when respondent's customers refused to pay him and a bonding agent neglected to inform him of a discontinued bond.

Findings

1. During the period from July 1, 1971 through October 31, 1971 respondent operated as a radial highway common carrier and a dump truck carrier.
2. Respondent used subhaulers during the period covered by the staff investigation without having a subhaul bond on file.
3. Respondent was served with the appropriate tariff and all supplements thereto.
4. Respondent surrendered his operating permits to the Commission staff after being informed that he was operating without having a subhaul bond on file.
5. Respondent failed to pay his subhaulers within the time required by Item 94 of Minimum Rate Tariff 7.
6. Respondent has extended credit to shippers as alleged in excess of the maximum period authorized by Item 45(b) of Minimum Rate Tariff 7.
7. There are extenuating circumstances and the violations were caused by a series of events which respondent could neither have avoided nor controlled.

Based upon the foregoing findings of fact, the Commission concludes:

1. That respondent has violated Sections 3575 and 3737 of the Public Utilities Code.
2. Respondent, therefore, should be required to pay a fine of \$400.

O R D E R

IT IS ORDERED that:

1. Kenneth R. Barker, an individual, shall pay a fine of \$400 to this Commission pursuant to Section 3774 of the Public Utilities Code on or before the fortieth day after the effective date of this order.

2. Kenneth R. Barker shall cease and desist from employing and using subhaulers until all debts presently owed to subhaulers are paid in full and respondent has the required subhaul bond in effect and on file with the Commission.

3. Kenneth R. Barker shall use all reasonable means, including legal action, to collect all delinquent freight charges and shall place all monies collected, less 5 percent, in a trust account for expeditious disbursement of funds to subhaulers who have not been paid in full.

4. Kenneth R. Barker shall advise the Commission in writing within thirty days of the date of this order and on the first Monday of each month thereafter, of any and all amounts still owing to subhaulers and the action taken to effect such payment.

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

Dated at San Francisco, California, this 19th day of SEPTEMBER, 1972.

William L. Higgins President
William L. Higgins
William L. Higgins
William L. Higgins
Commissioners