

Decision No. 80997

ORIGINAL

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
JOE R. MELLO, an individual doing
business as MELLO TRUCK LINES;
WESTERBEKE ENTERPRISES, INC., a
California corporation doing
business as CONSOLIDATED MILLING
CO.; and WESTERN CONSUMERS
INDUSTRIES, INC., a California
corporation.

Case No. 9356
(Filed March 28, 1972)

Marshall A. Smith, Jr., Reliable Traffic
Service, for Joe R. Mello; E. Kenneth
Clark, for Western Consumers Industries,
Inc.; and Harry F. Wagner, for Consolidated
Milling Co.; respondents.
James Cherry, Attorney at Law, and E. E. Cahoon,
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 Joe R. Mello, an individual doing business as Mello Truck Lines (Mello), for the purpose of determining whether said respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging less than applicable minimum rates in connection with for-hire transportation performed for Westerbeke Enterprises, Inc., a California corporation doing business as Consolidated Milling Co. (Consolidated), and Western Consumers Industries, Inc., a California corporation (Western).

Public hearing was held before Examiner Mooney in Fresno on July 18, 1972. Submission was subject to the receipt of a late-filed exhibit which has been received.

Mello operates pursuant to a radial highway common carrier permit. He has a terminal in Hanford. During the staff investigation referred to hereinafter, he employed five drivers and a mechanic; operated five tractors, nine sets of grain trailers, and two flat bed trailers; and had been served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each. His gross operating revenue for the year ending March 31, 1972 was \$258,879.

On various days during September 1971, a representative of the Commission's staff visited Mello's place of business in Hanford and examined his records for the period May 1 to July 15, 1971. The representative testified that he made true and correct photostatic copies of freight bills covering 32 shipments of animal feeds and feed supplements transported for Consolidated, and 71 shipments of animal feed and three shipments of clay transported for Western during the review period and that the copies are included in Exhibit 2. He stated that Mello had informed him that the freight bills in Exhibit 2 were the only documents he had for the transportation in issue, and that said respondent had been cooperative during the investigation. The witness testified that he had checked all necessary mileages and had determined by personal observation that the following origins and destinations were not served by rail facilities: Consolidated's facility on Township Road located 4.1 miles northwest of the unnamed junction point, one constructive mile west of the Yuba City basing point; George Verhoeven Feed Company, Inc.'s facility at 11735 E. Artesia Boulevard, Artesia; Paul Harrison Co., Atwater; and Dext Feed Co., 1173 Mabury Road, San Jose.

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 the rate statements in Exhibits 3 and 4 which relate to transportation for Consolidated and Western, respectively. Each of the rate exhibits shows the rate and charge assessed by Mello, the rate and charge computed by the staff, and the amount of undercharge alleged by the

staff for the transportation in issue. The rate expert stated that the rate errors were the result of assessing apparent incorrect rail rates under the alternative provisions of Minimum Rate Tariff 14-A and failure to assess the applicable minimum truck rates from MRT 14-A and 2. The amount of the alleged undercharges shown in Exhibit 3 (Consolidated) and 4 (Western) are \$2,599.49 and \$1,968.20, respectively, and the total thereof is \$4,567.69.

Testimony and exhibits on behalf of respondents were presented by Mr. Mello, a rate consultant and an accountant for respondent carrier, the manager of Western, and a commodity trader for Consolidated. The evidence they presented was as follows: Mello has hauled for both respondent shippers for a number of years. They are satisfied with and will continue to use his service. Both also operate proprietary trucking equipment. Mello had understandings with the shippers that the lowest lawful rates were to be applied to all transportation. He was of the opinion that certain of the shipments in issue could have been consolidated for rating purposes. Mello relied on others for many of the rates he used. None of the respondents were aware that there had been any rating errors. Mello has now retained the services of an accountant and rate consultant to make certain that errors do not occur in the future.

Exhibits 5 through 8, placed in evidence by, or on behalf of Mello, take exception to certain of the staff ratings. Those exhibits allege that the transportation covered by Parts 1, 2, and 3 and by Parts 12 and 13 of the staff's Exhibit 3 (Consolidated) could have been rated as two multiple lot shipments rather than as five individual shipments as recommended by the staff. Copies of the documentation issued in connection with the transportation are included in Exhibit 5 and Revised Exhibit 6. Mello stated that this documentation had not been shown to the staff investigator because he had not requested it. A review thereof discloses that the documentation does not comply with the requirements of the multiple lot rule in Items 140 and 141 of Minimum Rate Tariff 14-A (MRT 14-A). In neither instance do the documents issued by the carrier for each pickup refer to the alleged single multiple lot document as required

by paragraph 3 of Item 141. Furthermore, the alleged multiple lot document for Parts 12 and 13 does not specify the quantity of freight to be transported as required by paragraph 1(b) of Item 140. In the circumstances, the transportation must be rated as five separate shipments as recommended by the staff.

We agree with Mello that the transportation covered by Part 37 of Exhibit 4 (Western) should be rated as two separate shipments rather than as a single shipment as shown in the exhibit. The documents in respondent carrier's Exhibit 7 show that the transportation was handled as two shipments. By rating the transportation in this manner, the undercharge in connection therewith is reduced from the \$83.80 shown in Part 37 of the staff's Exhibit 4 to \$58.94.

Mello's Exhibit 7 also takes exception to the staff's rating of the five shipments of bulk copra pellets covered by Parts 41 through 45 of Exhibit 4 (Western). The staff applied distance rates in Item 550 of MRT 14-A to each of the shipments. Mello alleges that pursuant to the alternative application of the common carrier rates provisions of MRT 14-A, the lower Scale 13 rates named in Item 29810 of Pacific Southcoast Freight Bureau (PSFB) Tariff 244-E could be applied. The commodity description for Scale 13 rates is set forth in Item 160 of PSFB Tariff 240-K. The Index of Commodities in Tariff 240-K includes the listing "Cake, Cocoanut (Copra), oil" and refers to Item 160 for the applicable rate scale. The pertinent portion of the commodity description in Item 160 is as follows:

"Oil Cake, Oil Cake Meal, or Oil Cake Meal Cubes
or Pelletts, vegetable, sweetened or unsweetened..."

Since copra is listed in the Index of Commodities and refers to Item 160, it is fair and reasonable to conclude that it was the intent of the framers of the tariffs that copra be included in the Scale 13 rate scale in Item 160. We will accept the ratings

based on the Scale 13 rates set forth in Mello's Exhibit 7 for the five shipments. By so doing, the undercharge is \$80.11 for the transportation rather than the \$115.04 shown in the staff's Exhibit 4.

An undercharge letter was sent to Mello in 1967.

Based on a review of the evidence, we are of the opinion that Mello should be directed to collect the undercharges found herein; that a fine in the amount of the undercharges and an additional punitive fine of \$500 should be imposed on Mello; and that he should be ordered to cease and desist from violating the Commission's minimum rate orders. The transportation consultant representing Mello requested that in the event any fine should be imposed on Mello that he be allowed to pay it in installments over a six-month period with a first installment of \$1,000. This request will be granted.

Findings

1. Mello operates pursuant to a radial highway common carrier permit.
2. Mello was served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each.
3. The ratings and undercharges computed by Mello's rate witness in Exhibit 7 for the transportation summarized in Parts 37 and 41 through 45 of Exhibit 4 (Western) are correct.
4. Except as noted in Finding 3, the ratings and undercharges computed by the staff in Exhibit 3 (Consolidated) and 4 (Western) are correct.

5. With the modifications referred to in Finding 3, Mello charged less than lawfully prescribed minimum rates in the instances set forth in Exhibits 3 (Consolidated) and 4 (Western) resulting in undercharges in the amount of \$2,599.49 and \$1,908.41, respectively. The total is \$4,507.90.

Conclusions

1. Mello violated Sections 3664 and 3667 of the Public Utilities Code.

2. Mello should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$4,507.90, and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$500.

3. Mello should be directed to cease and desist from violating the minimum rates and rules established by the Commission.

The Commission expects that Mello 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 his 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.

C R E E R

IT IS ORDERED that:

1. Joe R. Mello, an individual doing business as Mello Truck Lines, shall pay a fine of \$5,007.90 to this Commission in six monthly installments with a first installment in the amount of \$1,000 due on or before the fortieth day after the effective date of this order and each of the five additional installments of \$801.58 due each succeeding month thereafter until the fine has been paid in full.

2. Said respondent shall take such action, including legal action, as may be necessary to collect the 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 Joe R. Mello. 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 30th day
of JANUARY, 1973.

William J. ... President
[Signature]
[Signature]
[Signature] Commissioners

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