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ORIGINAL

Decision No. 81019

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 fresh or)
green fruits and vegetables and)
related items (commodities for which)
rates are provided in Minimum Rate)
Tariff 8).

Case No. 5438
Petition for Modification
No. 88
(Filed August 29, 1972)

Richard W. Smith and Arlo D. Poe, Attorneys at Law,
and Herbert H. Hughes, for California Trucking
Association, petitioner.
Ralph Hubbard, for California Farm Bureau Federation,
interested party.
Robert E. Walker, for the Commission staff.

O P I N I O N

Minimum Rate Tariff 8 (MRT 8) names statewide minimum rates for the transportation of fresh fruits and vegetables. In this petition, California Trucking Association seeks the establishment of additional charges in MRT 8 for the loading of fresh bananas at the facilities of United Fruit Company (United) at Wilmington and Standard Fruit and Steamship Company (Standard) at Long Beach.

Public hearing in this matter was held before Examiner Mallory at Los Angeles on December 15, 1972. The matter was temporarily removed from the calendar in order that the Commission might consider the Motion of the California Farm Bureau Federation (Farm Bureau) that carriers be ordered to cease and desist from payment of the loading charges assessed by United and Standard for loading of shipments of bananas at their facilities in Long Beach and Wilmington.

Evidence was presented on behalf of petitioner by the Director of petitioner's Division of Transportation Economics. An associate transportation rate expert testified for the Commission staff.

The evidence adduced from petitioner's witness is substantially as follows. There are a limited number of highway permit carriers engaged in the transportation of bananas from shipside facilities in Long Beach and Wilmington. The carriers engaged in this transportation are required by Standard and United to employ two so-called "lumpers" to assist in the loading of the bananas into the carriers' equipment.

The witness introduced into evidence copies of letters from United and Standard dated April 6, 1972 and June 13, 1972, respectively. The letters are directed to trucking firms receiving cargo from the companies. The following is extracted from Standard's letter:

"TO: All Trucking Firms Receiving Cargo from
Standard Fruit and Steamship Company,
Long Beach, California

"As a result of previously negotiated wage and benefit increases with Local 692 of the International Brotherhood of Teamsters, it will be necessary to revise the swamper loading charges for the calendar year of 1972.

"Effective 19 June 1972, trucking firms receiving cargo from Berth 208 will be billed on the following basis:

For loads of 500 boxes or less \$28.38 per load plus
6¢ per box for all boxes over 400 boxes.

For loads of more than 500 boxes \$56.76 per load plus
6¢ per box for all boxes over 800 boxes.

"The above rates are contingent on the driver continuing to act as 'pusher' on loads over 500 boxes. If the driver does not act as a 'pusher' there will be an additional charge of \$14.19 for all loads over 500 boxes."

The letter from United reads, in part, as follows:

'Due to wage increases granted to Swampers under the agreement we have with Teamster Union Local 692, we find it necessary to amend our charges for Swamper service.

'The following charges will be in effect commencing April 9, 1972:

Loads of 500 boxes or less - \$27.28*

*For each box over 400, there will be an additional charge of six cents per box.

Loads of over 500 boxes - \$54.56**

**For each box over 800, there will be an additional charge of six cents per box.

'The present practice of the driver acting as a 'pusher' in loads over 500 boxes will continue. If the driver does not act as a 'pusher', there will be an additional charge of \$13.64 per load."

The witness for CTA testified that the charges referred to in the foregoing letters were not considered by the Commission in the establishment of minimum rates in MRT 8 and, therefore, represent a substantial additional cost to the carriers which should be compensated for in the minimum rates.

The staff witness presented additional facts concerning the transportation in question and opposed the inclusion of the proposed loading charges in MRT 8. The staff witness stated that the only companies importing bananas into California at this time are Standard and United. The loading charges are paid to the lumpers by United and Standard. The charges are then billed to the carriers whose vehicles were loaded by the lumpers. The freight charges on shipments of bananas originating at the facilities of United and Standard are not paid by them, but are paid by the receivers of bananas or their agents. Carriers have been able to negotiate charges higher than those applicable as minimum with respect to shipments destined to

points in southern California, which offset wholly or in part the loading charges assessed by United and Standard. Minimum rates are applied to shipments transported to northern California points in some cases and in other cases carriers have been able to obtain charges in excess of the minimum rates.

The representative of the Farm Bureau stated that in his opinion the payment by carriers of the loading charges assessed by United and Standard are unlawful rebates, and made a motion that the Commission issue an order directing United and Standard, and the carriers transporting bananas from the facilities of those companies, to cease and desist from collecting, on the one hand, or paying, on the other hand, the loading charges resulting from the collective bargaining agreements between United and Standard and the Teamsters Union.

The Commission staff and petitioner had no objection to the issuance of such an order. Petitioner requested that the proceeding be kept open to receive further evidence if the motion is denied. At the direction of the examiner, the staff witness furnished the names of the carriers transporting bananas who had been contacted in the staff study.

The Commission finds as follows:

1. United Fruit Company (United) and Standard Fruit and Steamship Company (Standard) operate facilities for unloading of fresh bananas from ocean-going vessels at Wilmington and Long Beach, respectively.
2. United and Standard have entered into collective bargaining agreements with Local 692 of the International Brotherhood of Teamsters to provide labor for the loading of trucking equipment at the terminal facilities of United and Standard in Long Beach and Wilmington.
3. The charges agreed to in the collective bargaining agreement are those set forth in the letters quoted above.

4. The collective bargaining agreements between United and Standard create an employer-employee relationship between United and Standard, on the one hand, and lumpers furnished by the Teamsters Union, on the other hand.

5. It is the current practice of United and Standard to pay the loading charges assessed by the Teamsters Union employees, and to bill the amount of the charges to the highway permit carrier whose vehicle was loaded by the employees.

6. There are no provisions in Minimum Rate Tariff 8, nor is there any other authority granted by this Commission, which permits United and Standard to assess loading charges incurred by them to highway permit carriers which haul bananas from the facilities of those companies at Wilmington and Long Beach, nor for highway carriers to pay the loading charges billed to them by United and Standard.

7. The transportation charges for shipments of bananas from United at Wilmington and Standard at Long Beach are paid by the consignees of said shipments, or by debtors other than United and Standard.

8. The highway permit carriers determined by the Commission staff witness to be engaged in the transportation of bananas from United and Standard are those specifically named in the order which follows.

9. The highway permit carriers in question are respondents in Case No. 5438, are authorized to perform the intrastate transportation of fresh bananas within California, and have been served with Minimum Rate Tariff 8.

The Commission concludes that:

1. The payments to United and Standard by highway permit carriers for services of loading the vehicles of said carriers at the facilities of United and Standard constitute an unlawful device to refund a portion of the transportation charges collected by the highway permit carriers from other persons (debtors) under provisions of Section 3800 of the Public Utilities Code.

2. The highway carriers which engage in the transportation of bananas from the facilities of United and Standard should be directed forthwith to cease and desist from the payment to United and Standard of loading charges incurred by United and Standard in connection with the loading of bananas.

3. United and Standard should be placed on notice that the practice of billing loading charges incurred by them to highway carriers is unlawful, and that continuance of said practice may lead to penalty action under Section 3804 of the Public Utilities Code.

4. The Motion of California Farm Bureau Federation should be granted to the extent provided by the order which follows.

O R D E R

IT IS ORDERED that:

1. The highway permit carriers listed in Appendix A to this order are directed forthwith to cease and desist from making payments for loading charges billed to them by United Fruit Company for loading of bananas into the equipment of the carriers at the facilities of United Fruit Company at Wilmington.

2. The highway permit carriers listed in Appendix A to this order are directed forthwith to cease and desist from making payments for loading charges billed to them by Standard Fruit and Steamship Company for loading of bananas into the equipment of the carriers at the facilities of Standard Fruit and Steamship Company at Long Beach.

3. The Secretary of the Commission is directed to cause personal service of this order to be made on the carriers listed in Appendix A, and upon United and Standard at the following addresses:

Mr. E. B. Holcombe, General Manager
United Fruit Company
Berth 147
Wilmington, CA 90744

Mr. J. Casasanto, West Coast Terminal Manager
Standard Fruit and Steamship Company
Pier A - Berth 208
Long Beach, CA 90801

4. Service of this order on United Fruit Company and Standard Fruit and Steamship Company constitutes notice to these companies that continuation of the practice of billing loading charges to carriers performing the intrastate transportation of bananas may result in penalty action under Section 3804 of the Public Utilities Code.

5. Petition No. 88 in Case No. 5438 is denied.

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

Dated at San Diego, California, this 6th day of FEBRUARY, 1973.

Vernon L. Sturgeon
President
William J. Fenwick
W. W. Davis
John M. ...
...
Commissioners

APPENDIX A
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| Charles W. Wyant DBA Adams-Johnson, Wyant Trucking and Alta Loma Transport Associates 5675 Sapphire Street Alta Loma, CA 91701 | T-43537 |
| American Transport System, Inc. 871 Charter Street Redwood City, CA 94063 Victor P. Suglio, President | T-88119 |
| Bayview Trucking, Inc. P.O. Box 7092 Sacramento, CA 95826 Frank Hayashida, President | T-91220 |
| California Cartage Co., Inc. 20021 Susana Road Compton, CA 90221 L. F. Wilson, Treasurer | T-7487 |
| Central Coast Truck Service P.O. Box A D Watsonville, CA 95076 John H. Spear, President | T-71923 |
| Otis Duran and Charles Mackbee DBA D & M Trucking Co. 1934 - 8th Avenue Los Angeles, CA 90018 | T-96402 |
| Facchino Freight Lines 699 No. Sixth Street San Jose, CA 95112 Bernard J. Facchino, President | T-74798 |
| Hefley Trucking Co. 2774 S. Orange Fresno, CA 93725 Grady S. Hefley, Copartner | T-58421 |
| Frank Elebakos & Sons Transportation, Inc. 543 Amber Way Petaluma, CA 94952 Frank Elebakos, President | T-102097 |
| Signal Trucking Service, Ltd. 3770 East 26th Street Los Angeles, CA 90023 P. S. Meyerhoffer, Controller | T-12658 |

APPENDIX A
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Standard Truckline of San Jose
795 W. Hedding Street
San Jose, CA 95126

T-78114

SED Trucking Co., Inc.
744 S. Alameda
Los Angeles, CA 90021
Taro Saisho, President

T-92398

Trans-Arrow, Inc.
P.O. Box 308
Sacramento, CA 95814
Thomas S. Chan, President

T-70785