

Decision No. 81343**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 Mitchell Bros. Truck Lines, an Oregon corporation; Tidewater Industries, Inc., doing business as Bonnie Sales, a New York corporation; Western Pine Supply, a California corporation; and Johns-Manville Products Corporation of California, a Delaware corporation.

Case No. 9478
(Filed December 5, 1972)

Pete A. Schons, for Mitchell Bros. Truck Lines, and Philip J. McCoy, for Western Pine Supply Company, respondents.
Lionel B. Wilson, Attorney at Law, and E. H. Hjelt, 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 Mitchell Bros. Truck Lines, an Oregon corporation (Mitchell), for the purpose of determining whether it violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting less than applicable minimum rates in connection with transportation performed for Tidewater Industries, Inc., doing business as Bonnie Sales, a New York corporation (Bonnie Sales); Western Pine Supply, a California corporation (Western); and Johns-Manville Products Corporation of California, a Delaware corporation (Johns-Manville).

Public hearing was held before Examiner Mooney in San Francisco on February 6, 1973, on which date the matter was submitted.

Findings

The following facts were stipulated to in writing by Mitchell and the staff (Exhibit 1) and we find them to be such:

1. Mitchell operates pursuant to radial highway common carrier and highway contract carrier permits. It also holds highway common carrier and cement carrier certificates. Its certificated operations are not involved in the investigation herein.

2. Mitchell's main office is located in Portland, Oregon. It maintains four terminals in California at Crescent City, Richmond, Stockton, and Vernon.

3. Mitchell has been served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each.

4. Mitchell's gross operating revenue for the year 1971 for its California intrastate operations was \$1,522,303.93.

5. On August 3 and 4, 1971, and on subsequent dates, members of the Commission staff reviewed Mitchell's records for the period March, April, May, and June 1971. The investigation disclosed rate errors in connection with the transportation of general commodities for the three shipper respondents during the review period. The rate errors resulted from failure to comply with documentation requirements for multiple lot and split-delivery shipments and failure to assess applicable switching charges at destination for shipments rated under the alternative application of common carrier rate provisions of Minimum Rate Tariff 2.

6. In connection with the transportation referred to in Finding 5, Mitchell charged less than the lawfully prescribed minimum rates in the amounts of \$909.16, \$1,164.93, and \$592.40 for transportation performed for Bonnie Sales, Western, and Johns-Manville, respectively.

7. Subsequent to the issuance of the order instituting investigation herein, Mitchell has commenced procedures to collect the undercharges referred to in Finding 6, the total of which is \$2,666.49.

8. Mitchell was a respondent in Case No. 5941 and a penalty was imposed on it for rate violations in said proceeding. The staff issued three undercharge letters to it in the past and held an admonishment conference with it in 1968.

Discussion

Other than the statement by the general manager of Mitchell that the undercharges were inadvertent and not deliberate and that it has collected the undercharges from Bonnie Sales and Johns-Manville, the only matter requiring comment is the assertion by Western that it should not be held accountable for any undercharges. In this regard, the representative of Western stated as follows: His company is a wholesale distributor of forest products in California; it has seven trucks of its own and uses Mitchell when it needs additional equipment; for the transportation herein, it secured the freight charges from Mitchell and incorporated them in its selling prices; its products are sold f.o.b. destination, and once it collects from its customer, it has no recourse for any additional freight charges; its profit margin is low, and a few cents difference in freight rates could adversely affect it; 90 percent of the undercharges involving his company resulted from improper documentation by Mitchell.

With respect to the assertion by Western, it is a well settled rule that even though a carrier misquotes his tariff charges the shipper must, nevertheless, pay the proper tariff charge.

(Re Morrison Trucking Co., (1963) 61 CPUC 234, 237.)

Conclusions

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

2. Mitchell should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$2,666.49, and, in addition thereto, should pay a fine pursuant to Section 3774 thereof in the amount of \$500.

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

The Commission expects that Mitchell 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 its 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.

O R D E R

IT IS ORDERED that:

1. Mitchell Bros. Truck Lines, an Oregon corporation, shall pay a fine of \$3,166.49 to this Commission on or before the fortieth day after the effective date of this order.

2. Said respondent shall take such action, including legal action, as may be necessary to collect the amounts of 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 Mitchell Bros. Truck Lines. 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 8th day of MAY, 1973.

Yveson L. Stephens
President
William Lyons, Jr.
Alvin
Edward
Commissioners

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