

Decision No. 82052

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 ANNA MANN as EXECUTRIX of the estate of ELWIN R. MANN, deceased, doing business as ELWIN R. MANN TRANSPORTATION; CAM DISTRIBUTING, INC., a California corporation; KEAN DISTRIBUTING CO., INC., a California corporation, JIM MILLER CO., a California corporation; NEW VALLEY LETTUCE DISTRIBUTORS OF SAN JOSE, INC., a California corporation; CLINTON RIDER and ALLAN RIDER, co-partners, doing business as H. A. RIDER & SONS and RICHARD C. SCHWARTZ and BEVERLY J. SCHWARTZ, co-partners, doing business as R. C. SCHWARTZ & COMPANY.

Case No. 9550  
(Filed May 1, 1973)

Thomas H. Skillicorn, Attorney at Law, for Elwin R. Mann Transportation, respondent.  
Elinore C. Morgan, 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 operations, rates, charges, and practices of Anna Mann as executrix of the estate of Elwin R. Mann, doing business as Elwin R. Mann Transportation (Mann) for the purpose of determining whether Mann charged less than minimum rates in connection with transportation performed for Cam Distributing, Inc. (Cam); Kean Distributing Company, Inc. (Kean); Jim Miller Company, a corporation (Miller); New Valley Lettuce Distributors of San Jose, a corporation (New Valley); Clinton Rider and Allan Rider, co-partners, doing business as H. A. Rider & Sons (Rider); and Richard C. Schwartz and Beverly J. Schwartz, co-partners, doing business as R. C. Schwartz & Company (Schwartz); and whether Mann falsified shipping documents in connection with transportation for Cam and Schwartz.

Public hearing was held before Examiner Mooney in Watsonville on July 31, 1973, on which date the matter was submitted.

Findings

The following undisputed facts are established by the record, and we find them to be such:

1. Mann operates pursuant to radial highway common carrier and highway contract carrier permits.
2. Between May and September 1972, the Commission staff conducted an investigation of Mann's operations and reviewed her records for the transportation of apple juice for Rider during the period January through May 1972 and for the transportation of produce for the other five shipper respondents during the period November 1971 through April 1972. The investigation disclosed various rate errors in connection with transportation for the six shipper respondents and the failure by Mann to show all points of pickup and/or destination on certain of the freight bills for Cam and Schwartz.
3. Mann issued a total of approximately 4,000 freight bills for all transportation performed during the review periods.
4. At the time of the staff investigation, Mann had terminals in Watsonville and Los Angeles; operated 3 trucks, 15 tractors, and 19 van semi-trailers; had 40 employees; and had all applicable minimum rate tariffs and distance tables. Mann's gross operating revenue for the year ending March 31, 1973, was \$1,510,726.
5. The rate errors referred to in Finding 2 are summarized in the staff's Exhibits 3 through 8, one for each shipper respondent. The rate errors resulted from failure to comply with multiple lot, split shipment, and produce shipment rules in minimum Rate Tariffs 2 and 8; failure to charge for all pickups and deliveries, incorrect rerating, and the incorrect assessment of rates.
6. The freight bills for Cam and Schwartz referred to in Finding 2 for which all pickup and delivery points were not shown

did not include charges for the pickups and deliveries not shown. However, the weight certificates and other underlying documents for these shipments did show all pickups and deliveries.

7. The minimum rates and charges computed by the staff in Exhibits 3 through 8 are correct.

8. Mann charged less than the lawfully prescribed minimum rates in the instances set forth in the exhibits and in the amounts shown below:

<u>Exhibit No.</u>	<u>Shipper</u>	<u>Amount of Undercharges</u>
3	Cam	\$ 9,012.89
4	New Valley	151.63
5	Kean	525.98
6	Schwartz	1,066.33
7	Miller	454.58
8	Rider	<u>3,906.47</u>
Total for six exhibits		\$15,117.88

9. Mann was cooperative at all times with the staff during the investigation and furnished all documents and information requested.

10. Mann was issued an undercharge citation by the staff for certain rate violations on April 4, 1972; a fine was imposed on this respondent and he was directed to collect undercharges by Decision No. 72737 dated July 11, 1967 in Case No. 8614. Any other formal or informal disciplinary matters that this respondent may have been involved in are all over 10 years ago and are too remote in time to be considered herein.

11. Elwin R. Mann is deceased.

#### Discussion

The only matter requiring discussion is the penalty, if any, that should be imposed on Mann. The staff recommends that Mann be

fined in the amount of the undercharges found herein plus a punitive fine of \$5,000. It is the staff position that failure to show and charge for all pickups and/or deliveries on certain of the freight bills for Cam and Schwartz constitutes falsification of records irrespective of whether this information was shown on any underlying documents. Counsel for Mann took exception to the staff recommendation and in particular the recommendation that a punitive fine be imposed.

In support of Mann's position, the manager of the company testified as follows: He has been the manager of Mann for a number of years; his office is in Watsonville; he visits the Los Angeles terminal three or four times a month and the El Centro area twice monthly; the billing for shipments from the Los Angeles and El Centro areas are prepared there; most of the rate errors in the staff exhibits involved shipments from these areas; he has reviewed the rate errors with the Southern California personnel and has taken steps to assure that errors do not occur in the future; the rate errors were due to inexperience of the personnel and were not intentional; steps are being taken to collect all of the undercharges; in addition to this investigation and those referred to in Finding 10, Mann has been investigated by the staff on numerous other occasions in recent years which have not disclosed any rate or other violations.

We agree with the staff recommendation that Mann be fined in the amount of the undercharges. As to a punitive fine, we are of the opinion that such a fine in the amount of \$3,500 should be imposed on the respondent carrier. Even viewing the evidence in the light most favorable to Mann, it shows an extreme laxity on the part of the respondent carrier and in the training of personnel responsible for the preparation of freight bills and the assessment of charges. This will not be tolerated.

Additional Findings

12. The failure to show all pickups and/or deliveries on all freight bills for Cam and Schwartz referred to in Findings 2 and 5 above has not been established beyond a reasonable doubt to be known falsification of documents. However, it was at the very least, extreme laxity and carelessness by the respondent carrier.

Conclusions

1. Mann violated Sections 3664 and 3737 of the Public Utilities Code.

2. Mann should pay a fine pursuant to Section 3300 of the Public Utilities Code in the amount of \$15,117.88 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$3,500.

3. Mann should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that Mann 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 such measures. If there is reason to believe that Mann 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 determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Anna Mann, as executrix of the estate of Elwin R. Mann, deceased, doing business as Elwin R. Mann Transportation (Mann), shall pay a fine of \$3,500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Mann shall pay interest at the rate of 7 percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

2. Mann shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$15,117.88 on or before the fortieth day after the effective date of this order.

3. Mann shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 8, and shall notify the Commission in writing upon collection.

4. Mann shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of the 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.


5. Mann 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 Mann and to cause service by mail of this order to be made upon all other respondents. The

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effective date of this order as to each respondent shall be twenty days after completion of service on that respondent.

Dated at San Francisco, California, this 30<sup>th</sup>  
day of OCTOBER, 1973.

  
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President

  
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Commissioners

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

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.