

ORIGINAL

Decision No. 82068

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

(Appearances are shown in Decision No. 81019)

Additional Appearances

Harold F. Culy and Frank Hayashida, for Bayview Transportation, Inc., respondent. ✓  
Brobeck, Phleger & Harrison, by Robert N. Lowry, Attorney at Law, for United Brands Company and Standard Fruit and Steamship Company; ✓  
Charles W. Nelson, Jr., Attorney at Law, for Standard Fruit and Steamship Company; and  
Frank Reyher, for Alpha Beta Markets; interested parties.  
John Lemke, for the Commission staff.

OPINION ON REHEARING

Minimum Rate Tariff 8 (MRT 8) contains statewide minimum rates for the transportation of fresh fruits, including bananas. ✓  
In Petition 88, California Trucking Association (CTA) sought the establishment of additional charges in MRT 8 for the loading of ✓  
fresh bananas at the facilities of United Fruit Company (now United Brands Company, and hereinafter referred to as United) at Wilmington, and at the facilities of Standard Fruit and Steamship Company (Standard) at Long Beach.

Following public hearing, the Commission issued Decision No. 81019 dated February 6, 1973, in which it concluded that payments by highway carriers to United and Standard for the services of swampers employed to load the bananas into highway carriers' equipment constituted an unlawful device to refund a portion of the transportation charges collected by the highway carriers in violation of Section 3800 of the Public Utilities Code, that highway carriers should be directed to discontinue said payments, and that Standard and United should be placed on notice that the practice of billing carriers for such services is unlawful. CTA's request for establishment of specific charges was denied.

United and Standard petitioned for leave to intervene in the proceeding and for rehearing of Decision No. 81019. By Decision No. 81112 dated March 6, 1973, the Commission granted leave to the banana companies to participate in the proceeding, stayed the effectiveness of Decision No. 81019, and granted rehearing of that decision.

Rehearing was held in San Francisco on May 7 and 8, 1973 at which further evidence was presented by the banana companies and by CTA. The matter was submitted upon receipt of opening and reply briefs, due June 18 and July 18, 1973, respectively.

Briefs were filed by CTA, United, Standard, and the California Farm Bureau Federation (Farm Bureau).

There is no substantial disagreement concerning the facts. CTA and Farm Bureau urge that the facts support an affirmation of the conclusions reached in Decision No. 81019. United and Standard urge that the proceeding herein is moot in view of the establishment

of a new rule in MRT 8 effective June 30, 1973 requiring carriers to assess to debtors the costs of help in addition to the driver for loading.<sup>1/</sup>

The banana companies contend, in any event, that the payments by carriers to banana companies is to reimburse the banana companies for loading services provided in accordance with long-standing custom and practice, and that such payments do not constitute a direct or indirect rebate of the freight charges or payment to influence selection of carriers.

---

1/ The rule in question, promulgated in Item 120 of MRT 8 pursuant to Decision No. 81450 in Case No. 5438, Petition 80, is as follows:

"1(b) The rates and charges named in this tariff include the services of a single carrier employee (driver) only. If the services of helpers or other parties are employed to perform, or assist in the performance of accessorial services rendered under this tariff, the actual charges assessed or incurred therefor (not to exceed the scale of charges established pursuant to Sections 56801 through 56982, Chapter 8 of the California Agricultural Code) shall be billed directly to and collected from the debtor. These charges shall be in addition to all other rates and charges accruing under this tariff and in no event shall such charges, if assessed or incurred on an hourly basis, be less than those provided in Item 150."

The provisions of paragraph 1(b) of Item 120 are scheduled to expire July 1, 1974.

Findings of Fact Concerning Loading Services at Banana Facilities

1. Standard, a subsidiary of Castle & Cooke, Inc., is an importer and distributor of bananas grown or purchased by it in Ecuador and Nicaragua, and transported in refrigerated vessels to its receiving facility at Pier A, Berth 208, Long Beach, California.
2. United is an importer of bananas purchased by it from its subsidiaries and other sources in Central and South American countries, and transported in refrigerated vessels to its receiving facility at Berth 145, at Wilmington, California.
3. Standard and United are the only importers of bananas into California through California ports.
4. To allow time for ripening of green bananas and to meet market preferences, banana vessels arrive on Monday and Thursday of each week.
5. Each of Standard's vessels carries 90,000 to 100,000 boxes, equivalent to 125 truckloads of bananas. Each truckload from Standard consists of approximately 840 boxes totaling 35,000 pounds. Each of United's vessels can carry up to 140,000 boxes of bananas. On alternate voyages, approximately 60,000 to 70,000 boxes are unloaded at Wilmington, with the balance remaining on the vessel for further transportation to Seattle. Each truck at United can load approximately 900 boxes of bananas.
6. Shoreside gantry conveyors are projected into the hatches of the vessels where longshoremen place boxes of bananas into pockets of the gantry conveyor. This conveyor moves the boxes to the pier where a belt conveyor system carries them to the tailgates of empty trailers which have been spotted to receive them.
7. Loading and unloading of the shoreside conveyors is done by longshoremen employed and paid by Metropolitan Stevedoring Company.

At the tailgate of the trailer, a longshoreman "sweeps" the banana boxes off the shoreside conveyer belt onto a gravity roller extending into the body of the trailer. This point marks the jurisdictional boundary between that of the longshoremen's union and that of Local 692 of the Teamsters' Union.

8. Inside the van, two Teamster Union swappers, sometimes assisted by the driver acting as a "pusher", remove the boxes from the gravity roller and stack them in the van.

9. The buyers of bananas are jobbers or wholesalers which have ripening facilities necessary to ripen the green bananas for resale to small grocery stores, and large chain stores which ripen their bananas for sale in their own stores.

10. Pursuant to a consent decree entered in 1958, United is enjoined and restrained from engaging anywhere in the United States, directly or indirectly in the business of ripening, processing and selling bananas, or owning or controlling or having a proprietary interest in any person engaged in such business [United States of America v United Fruit Company (D.C.E.D.La., Civil Action No. 4560)].

11. Under a consent decree entered April 19, 1973, Standard is enjoined and prohibited from designating or influencing the selection of any carrier to be used in the transportation of bananas sold by it. Under the 1958 consent decree described above, United is enjoined and restrained from coercing or requiring any customer to use a particular motor carrier for the purpose of transporting bananas from United's dock. Customers select the mode of transportation to be used and designate and pay the carrier which is to perform it.

12. For many years prior to June 1, 1971, it was the practice of carriers picking up bananas at Standard's Long Beach terminal and United's Wilmington terminal to employ swappers to assist in the stacking of boxes of bananas inside their trailers. These swappers were paid by the carriers on either a piecework basis or at an hourly wage.

13. Because of delays in payments by carriers to swampers and the problems experienced by carriers in handling cash for the payment of swampers, Standard for a time, advanced for the account of some carriers, subject to reimbursement, funds for the payment of swampers employed by the carrier. However, this practice imposed clerical burdens on Standard and it was discontinued on February 1, 1970. The carriers for which Standard had advanced funds then returned to the former practice of paying their swampers directly. Unlike the practice followed by Standard, United at no time advanced for carriers funds for the payment of swampers employed by them.

14. In January 1971, Standard's facility at Long Beach was the subject of strike action by Teamsters' Local 692 which demanded that Standard execute an agreement recognizing the local as the bargaining unit for the swampers working at its banana terminal. Following the execution by Standard of a recognition agreement, United was approached by the union and presented with a similar demand under threat of a strike against United's facility. Accordingly, United executed a recognition agreement similar to that executed earlier by Standard.

15. Thereafter, the two banana companies negotiated a collective bargaining contract with the union effective June 1, 1971 covering swampers at their banana terminals. This contract provides, among other things, that the banana companies will recognize the union as the bargaining agent of the swampers and specifies rates of pay and fringe benefits payable to them. These rates of pay and basis on which they were to be applied reflected substantially the practices in effect when the swampers were paid directly by the carriers.

16. When the banana companies became obligated to pay for swamper services, they notified all carriers (including those customers using proprietary trucks) of the applicability of charges

intended to reimburse the banana companies for these costs. These charges reflected the banana companies' out-of-pocket costs, including wages, fringe benefits, payable taxes, and supervision and administrative expenses, but with no allowance for profit. Supervision and administrative expenses included in the charges billed to the truckers by the banana companies are in excess of the charges incurred by the truckers under the prior arrangements in effect.

17. The effect of the contract between the banana companies and Teamsters Union Local 682 was to make United and Standard the employer of the swamper working at their facilities and made a material change in the historical practice of using swamper to assist in the loading of carriers' vehicles at said facilities.

Additional Findings of Fact

18. Under the provisions of paragraph 1(b) of Item 120 of MRT 8 ✓ effective June 30, 1973 and scheduled to expire July 1, 1974, the highway carriers transporting bananas from the facilities for Standard and United are required to assess and collect from debtors (the customers of Standard and United) the actual charges assessed by Standard and United to the highway carriers for the services of the swamper employed by Standard and United for the loading of the carriers' vehicles.

19. The requirements of Item 120, paragraph 1(b) of MRT 8 pro- ✓ vide substantially the same relief originally sought by CTA in Petition 88.

20. The provisions of Item 120, paragraph 1(b) apply to all other situations where the level of charges for loading and/or unloading is determined by a party to the transaction other than the debtor or carrier.

21. No undue preference, prejudice, or discrimination will result from the application of the provisions of Item 120 of MRT 8 to the transportation of fresh bananas from Standard and United.

Conclusions of Law

1. In view of the current provisions of Item 120, paragraph 1(b) of MRT 8, the conclusions and order in Decision No. 81019 should be withdrawn as unnecessary.

2. No anti-trust implications result from the actions of the banana companies described in the above findings.

3. In all other respects, Petition No. 88 should be denied.

ORDER ON REHEARING

IT IS ORDERED that:

1. The conclusions and order set forth in Decision No. 81019 issued February 6, 1973 in Case No. 5438, Petition No. 88, are rescinded.



2. In all other respects, Petition No. 88 in Case No. 5438 is denied.

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

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

Yuan L. Stuenkel  
President  
William Lyons-Jr.

[Signature]  
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.