

ORIGINAL

Decision No. 82406

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 BOB DUNBAR, an individual, and SIERRA MOUNTAIN MILLS, a California corporation.

Case No. 9521
(Filed March 13, 1973)

Bob Dunbar, an individual doing business as Bob Dunbar Trucking, for himself, respondent.
Marvin J. Colangelo, Attorney at Law, for Sierra Mountain Mills, respondent.
Elinore C. Morgan, Attorney at Law, and E. E. Cahoon, for the Commission staff.

O P I N I O N

On March 13, 1973, the Commission instituted an investigation into the operations, rates, charges, and practices of Bob Dunbar, an individual (respondent Dunbar), and into respondent Dunbar's lease arrangements with Sierra Mountain Mills (respondent Sierra) for the purpose of determining:

1. Whether respondent Dunbar by means of a written lease may have permitted respondent Sierra to ship lumber at less than the applicable minimum rates, (a) because respondents did not comply with the terms of the written lease, and (b) because the terms of the written lease may be in conflict with Section 3548 of the Public Utilities Code and General Order No. 130.

2. Whether respondent Dunbar has failed to file said lease with the Commission in violation of General Order No. 130.

3. Whether in the event rates less than said minimum are found to have been charged, collected, or received, a fine in the amount of such undercharges should be imposed upon respondent Dunbar pursuant to Section 3800 of the Public Utilities Code.

4. Whether respondent Dunbar should be ordered to collect from respondent Sierra the difference between the charges actually received and the charges due under the minimum rate tariff.

5. Whether respondent should be ordered to cease and desist from any unlawful operations or practices.

6. Whether any other order or orders should be issued by the Commission.

The scope of the investigation includes but is not limited to all transportation of lumber performed for respondent Sierra utilizing equipment leased from respondent Dunbar during the period July 1, 1971 through December 31, 1971.

A public hearing in this matter was held before Examiner Cline at San Francisco on June 13, 1973. At the conclusion of the hearing the matter was taken under submission.

Respondent Dunbar conducts operations pursuant to Radial Highway Common Carrier Permit No. T 72 646. His place of business is Nevada City, California. As of December 31, 1970, respondent owned and operated a 1966 Peterbilt tractor, a 1968 Peterbilt tractor and trailer, a 1965 Page, a 1962 Lufkin, a 1965 Ford pickup, and a 1968 Ford station wagon. Prior to 1971 respondent Dunbar was only engaged in hauling wood chips to the Port of Sacramento. Such hauls are not the subject of this investigation. Copies of Minimum Rate Tariff 2, Distance Table 7, Exception Ratings Tariff 1, and applicable supplements and additions thereto were served upon respondent Dunbar. Copies of General Order No. 130 were mailed to all carriers by the Commission on October 9, 1970.

A representative of the Commission staff visited respondent Dunbar's residence south of Nevada City on January 25 and 28, March 8 and 15, and May 10, 1972 and checked his records of shipments for the period July 1 through December 31, 1971. Exhibit No. 1 consists of 12 parts, each of which contains (1) a copy of lessor's invoice covering lumber shipments transported during a period of half a month, and (2) a copy of lessee's statement for transportation charges paid lessor for lumber shipments for the same period.

Exhibit No. 2 is a copy of the transportation equipment lease entered into December 10, 1967 between respondent Dunbar, lessor, and respondent Sierra, lessee. The agreement on the signature page is dated January 12, 1968. The Exhibit A, which is a list of equipment covered by the lease, lists a 1966 Peterbilt truck tractor, a 1971 Peterbilt truck tractor, a 1971 Reliance trailer, a 1965 Trailmobile trailer, and a 1965 Mack truck. Paragraph 5 provides that the lessee shall hire and pay the wages of the drivers and all payroll expenses. The lessee deducts the drivers' wages and payroll expenses from the gross revenues payable to the lessor under the lease.

Exhibit No. 3 is a copy of General Order No. 130.

Exhibit No. 4 was prepared by a rate expert of the Commission staff. This exhibit shows the rate and charge assessed by respondent Dunbar to respondent Sierra, the minimum rate and charge computed by the staff, and the amount of the undercharge for each of the 12 parts in Exhibit No. 1. The total of the undercharges set forth in Exhibit No. 4 amounts to \$24,026.70. The staff witness testified that \$1,063.00 paid for insurance on the respondent Dunbar's equipment by respondent Sierra should be deducted from the \$24,026.70, leaving a balance of \$22,963.70 as the amount of the undercharges.

Exhibit No. 5 consists of two pages. The first page is a financial statement of respondent Dunbar as of June 10, 1973 which shows assets in the amount of \$220,700 and liabilities in the amount of \$117,212. The second page is a financial statement of respondent Dunbar as of December 31, 1970 which shows assets of \$84,200 and liabilities of \$30,400.

Exhibit No. 6 lists the gross revenues of respondent Dunbar for the year 1971. The totals were as follows:

Long Hauls	\$ 16,702.09
Chips	20,744.20
Lumber	47,531.93
Logs	18,635.89
Total	<u>\$103,614.11</u>

Respondent Dunbar's adjusted gross income as shown on his income tax returns was \$13,743 in 1970, \$32,434 in 1971, and \$39,103 in 1972.

Section 3548 of the Public Utilities Code provides as follows:

"The leasing of motor vehicles for the transportation of property to any person or corporation other than to a highway carrier, is prohibited as a device or arrangement which constitutes an evasion of this chapter, unless the parties to such lease conduct their operation according to the terms of the lease agreement, which shall be in writing, and shall provide that the vehicle shall be operated by the lessee or an employee thereof and the operation and use of such vehicle shall be subject to the lessee's supervision, direction, and control for the full period of the lease. The lessor or any employee of the lessor shall not qualify as an employee of the lessee for the purposes of this section. The provisions of this section shall not apply to the leasing of motor vehicles to the State, a city, a county, or a city and county."

The pertinent provisions of General Order No. 130, which became effective September 1, 1970, reads as follows:

**"RULES AND REGULATIONS TO GOVERN THE
LEASING OF MOTOR VEHICLES**

"General Provisions

- "A. CARRIER means every carrier described in Section 3511 of the Public Utilities Code.
- "B. LEASE means any contract or arrangement, other than a sale, a conditional sales contract, a chattel mortgage or statutory lien, whereby any person, firm, or corporation (herein called the lessor) who or which owns, controls, or is entitled to the possession of any motor vehicle, transfers to any other person, firm, or corporation (herein called the lessee) the right to possession and control of such motor vehicle. (LEASE does not include a subhaul agreement or a transaction subject to transportation rates based on vehicle units as prescribed by the Commission in any minimum rate tariff or published in any common carrier tariff.)
- "C. MOTOR VEHICLE means every motor truck, tractor, other self-propelled vehicle, trailer, semi-trailer, or dolly used for transportation of property over the public highways.
- "D. NONCARRIER means every person, firm, or corporation engaged in any business enterprise except for-hire transportation of property.
- "E. No carrier shall enter into or make any lease of a motor vehicle which constitutes a rebate, allowance, refund, remittance, or any other evasion of regulation in violation of the Public Utilities Code.
- "F. A carrier which enters into a lease of a motor vehicle shall:
 - 1. Keep a copy of the lease and complete records of such transaction available for inspection by the Commission staff for a period of not less than three years from the termination of the lease.

2. File a copy thereof with the Commission within five days thereafter. Any amendment or modification shall be in writing and a copy thereof filed with the Commission within five days after execution.

"G. When the term of the lease is thirty days or more:

1. A carrier-lessor shall delete the leased motor vehicle from its equipment list on file with the Commission for the duration of the term of the lease;

* * *

"J. In any proceeding before the Commission the burden of proof of the fact that the compensation stated in the lease is reasonable shall be upon the respondent or proponent of the lease.

"K. This general order establishes minimum leasing regulations only and in case of conflict between this general order and the provisions of a minimum rate tariff of this Commission, the minimum rate tariff shall prevail.

"L. Upon prior application and a showing of good cause, the Commission may, with or without a hearing, authorize deviations from any or all of the provisions of this general order.

* * *

"PART II

"REGULATION OF LEASING BY CARRIERS TO NONCARRIERS

"A. No carrier shall enter into or make any lease or any motor vehicle to any noncarrier except in accordance with the general provisions of this general order and the provisions of this part.

"B. Every carrier who enters into a lease of a motor vehicle to a noncarrier shall require the lessee to perform the terms and conditions thereof, without deviation.

- "C. Every lease from a carrier to a noncarrier shall conform to the following requirements:
1. Shall be in writing, contain all of the terms and conditions of the agreement, and be executed and signed by the parties thereto, or their regular employees or agents, prior to the beginning of the lease term;
 2. Shall provide for the exclusive possession, use, supervision, direction, and control of the motor vehicle, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease; except that the lease may provide that maintenance of the motor vehicle shall be the lessor's obligation;
 3. Shall specifically identify the motor vehicle or vehicles;
 4. Shall specify the term of the lease;
 5. Shall specify the reasonable compensation to be paid by the lessee for the rental of the motor vehicle.
 6. Shall provide that the motor vehicle shall be operated by the lessee or an employee thereof.
- "D. The lessor or any employee of the lessor shall not qualify as an employee of the lessee for the purposes of this part.
- "E. The motor vehicle leased shall not display the symbols required by Public Utilities Code Section 3543 on such motor vehicle for the duration of the term of the lease."

In the closing argument the staff counsel contended that by reason of deviations from the terms of the lease agreement, the arrangement for lease of equipment by respondent Dunbar to respondent Sierra constitutes a device for the evasion of Minimum Rate Tariff 2. She recommended that fines in the amount of the undercharges should be levied upon respondent Dunbar but that no punitive fines be imposed.

Respondents contended that the compensation stated in the lease and paid by respondent Sierra to respondent Dunbar was fair and reasonable and that no fines should be imposed by reason of the alleged undercharges.

Findings

1. Respondent Dunbar operates pursuant to a radial highway common carrier permit.
2. Respondent Dunbar was served with copies of General Order No. 130, Minimum Rate Tariff 2, Distance Table 7, and Exception Ratings Tariff 1, and applicable supplements and additions thereto.
3. Respondent Dunbar did not collect from respondent Sierra pursuant to paragraph 11 of the transportation equipment lease, Exhibit No. 2, the sum of \$25 each week as rental for each unit of the leased equipment.
4. Points other than those shown in Exhibit B attached to Exhibit No. 2 were served pursuant to the transportation equipment lease and charges were made by respondent Dunbar to respondent Sierra for service to such points.
5. Exhibit B which is a part of Exhibit No. 2, was added in April 1971 to the transportation equipment lease entered into December 10, 1967 by respondent Dunbar and respondent Sierra and dated January 12, 1968.
6. Copies of the original transportation equipment lease entered into between respondent Dunbar and respondent Sierra and subsequent modifications thereof were not filed with the Commission pursuant to General Order No. 130.

7. The charges pursuant to the transportation equipment lease by respondent Dunbar to respondent Sierra during the period of July 1 through December 31, 1971 were \$22,963.70 less than the minimum charges authorized by the applicable Minimum Rate Tariff 2 and Distance Table 7 resulting in undercharges in the amount of \$22,963.70. Said amount is the sum of \$24,026.70 undercharges set forth in Exhibit No. 4 less the sum of \$1,063.00 paid for insurance on respondent Dunbar's equipment by respondent Sierra.

8. Respondents Dunbar and Sierra have not sustained the burden of proving that the compensation stated in Exhibit No. 2 and the compensation actually collected by respondent Dunbar from respondent Sierra for equipment leased pursuant to Exhibit No. 2 during the period July 1 through December 31, 1971 was reasonable.

9. The Commission has not authorized deviations by respondents from any or all of the provisions of General Order No. 130.

Conclusions

1. The arrangement for lease of equipment by respondent Dunbar to respondent Sierra constitutes a device for the evasion of Minimum Rate Tariff 2 under Section 3548 of the Public Utilities Code because respondents did not comply with the terms of the written lease, Exhibit No. 2.

2. Respondent Dunbar has violated Sections 3548, 3664, and 3668 of the Public Utilities Code as well as General Order No. 130 and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$22,963.70.

The Commission expects that respondent Dunbar 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 respondent Dunbar 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. Respondent Bob Dunbar shall pay a fine to this Commission pursuant to Section 3800 of the Public Utilities Code of \$22,963.70 on or before the ninetieth day after the effective date of this order.

2. Respondent Bob Dunbar shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 7, and shall notify the Commission in writing upon collection.

3. Respondent Dunbar 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 2 of this order, or any part of such undercharges, remain uncollected ninety days after the effective date of this order, respondent Bob Dunbar shall file with the Commission, on the first Monday of each month after the end of the ninety 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. Respondent Bob Dunbar 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 the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Bob Dunbar and to cause service by mail of this order to be made upon respondent Sierra Mountain Mills and its attorney, Marvin C. Colangelo. The 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 29th day of JANUARY, 1974.

Vernon L. Stinson
President
William J. Gorman, Jr.

[Signature]
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Commissioners

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