

Decision No. 82672

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 WILLIAM FREA, JR., an individual, doing business as FREA TRANSPORTATION; ALEX WREN, an individual; PRODUCERS LIVESTOCK MARKETING ASSOCIATION, a Utah corporation; UNION PACKING COMPANY, a California corporation; BEN B. NORTON, an individual; PACHECO BROS., a partnership; HANFORD MEAT PACKING COMPANY, a California corporation; TROY ALLEN, an individual; WILLIAM O'NEILL, an individual, and EUGENE NUNES, an individual.

Case No. 9499
(Filed January 23, 1973)

Sheldon Mitchell and Associates, by Arden Riess,
for William Frea, Jr., respondent.
Lionel B. Wilson, Attorney at Law, and E. E. Cahoon,
for the Commission staff.

O P I N I O N

On January 23, 1973 the Commission instituted an investigation into the operations, rates, charges, and practices of William Frea, Jr., an individual doing business as Frea Transportation (Frea); Alex Wren (Wren), an individual; Producers Livestock Marketing Association (Producers), a Utah Corporation; Union Packing Company (Union), a California corporation; Ben B. Norton (Norton), an individual; Pacheco Bros. (Pacheco), a partnership; Hanford Meat Packing Company (Hanford), a California corporation; Troy Allen (Allen), an individual; William O'Neill (O'Neill), an individual; and Eugene Nunes (Nunes), an individual, for the purpose of determining:

1. Whether respondent Frea has violated Sections 3664 and 3737 of the Public Utilities Code by charging, demanding, collecting, or receiving a lesser compensation for the transportation of livestock

for respondents Wren, Producers, Union, Norton, Pacheco, Hanford, Allen, O'Neill, and Nunes than the applicable minimum rates and charges prescribed in Minimum Rate Tariff 3-A and supplements thereto.

2. Whether respondent Frea has violated Sections 3664 and 3737 of the Public Utilities Code by failing to assess the required rates and charges for transportation of livestock for respondents Wren, Producers, Union, and Hanford and has therefore failed to fulfill the conditions of Items 230, 250, 251, and 270 of Minimum Rate Tariff 3-A and supplements thereto.

3. Whether respondent Frea has violated Sections 3664 and 3737 of the Public Utilities Code by failing to comply with the collection requirements of Item 230 of Minimum Rate Tariff 3-A and supplements thereto for transportation of livestock for respondents Wren, Producers, Union, Hanford, Allen, and Nunes.

4. Whether respondent Frea may have violated Section 3667 of the Public Utilities Code by allowing deductions or making payments for improper loss and damage claims without complying with the conditions of Item 90 of Minimum Rate Tariff 3-A for transportation performed for respondents Wren, Producers, Union, Norton, Pacheco, Allen, and O'Neill.

5. Whether respondent Frea may have by means of known false billing or any other device or means assisted, suffered, or permitted respondents Hanford, Allen, and Nunes to obtain transportation at a rate less than the minimum rate then in force and effect as shown by Minimum Rate Tariff 3-A and supplements thereto, in violation of Public Utilities Code Section 3668 in that respondent Frea may have falsified shipping documents so as to show that the proper rates and charges had been assessed when in fact rates and charges were assessed on the basis of flat rates in violation of Item 70 of Minimum Rate Tariff 3-A.

6. Whether respondents Wren, Producers, Union, Norton, Pacheco, Hanford, Allen, O'Neill, and Nunes have paid less than the applicable rates and charges for the transportation performed by respondent Frea.

7. Whether respondent Frea should be ordered to collect from respondents Wren, Producers, Union, Norton, Pacheco, Hanford, Allen, O'Neill, and Nunes the difference between the charges billed or collected and the charges due under the aforementioned tariff.

8. Whether respondent Frea should be ordered to cease and desist from any and all unlawful operations and practices.

9. Whether any or all of the operating authority of respondent Frea should be cancelled, revoked, or suspended or, as an alternative, a fine should be imposed upon respondent Frea pursuant to Section 3774 of the Public Utilities Code.

10. Whether in the event undercharges are found to exist, a fine in the amount of such undercharges should be imposed upon respondent Frea pursuant to Section 3800 of the Public Utilities Code.

11. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

The investigation included the transportation performed by respondent Frea for respondents Wren and/or Producers, Union, Norton, Pacheco, Hanford, Allen, O'Neill, and Nunes during the period January 1, 1972 through May 31, 1972.

A public hearing was held before Examiner Cline at Fresno on April 17 and 18, 1973 and at San Francisco on July 24, 1973. At the conclusion of the hearing the matter was taken under submission.

Respondent Frea conducts operations as a radial highway common carrier and as a highway contract carrier pursuant to permits issued November 12, 1970. He employs one bookkeeper and ten drivers and operates twelve trucks and ten trailers designed to haul livestock.

During the calendar year 1972 he had gross operating revenue as follows:

1st Quarter	\$ 82,431
2nd Quarter	148,941
3rd Quarter	118,420
4th Quarter	<u>156,610</u>
Total Year 1972	\$506,402

The following tariffs were served upon respondent Frea pursuant to subscription:

- (a) Minimum Rate Tariff 3-A (MRT 3-A).
- (b) Distance Table 7.

A representative of the Commission staff made a preliminary examination of respondent Frea's shipping records on May 24 and 25, 1972. He had additional conferences with respondent Frea regarding these shipping records on June 21 and July 14, 1972.

Exhibit No. 1 contains economic data regarding respondent Frea, most of which has been set forth above. Exhibit No. 2 is a schedule of deposits made by Frea from January 4 through June 23, 1972. Exhibit No. 5 is a list of Frea's accounts receivable as of May 1972, showing the debits and credits to the accounts and also showing the accounts aged 30, 60, and 90 days. Exhibit No. 6 shows amounts billed to various shippers by Frea, amounts paid by various shippers to Frea, and balances due from various shippers during the period January 1 through May 31, 1972.

Exhibits Nos. 7, 7-B, and 18 are copies of the livestock freight bills, bills of sale, statements of charges, and descriptions of items for which checks from Producers Livestock Marketing Association were issued in payment. No freight bills were issued for 143 shipments. These documents were used by the Commission staff rate expert witness in the preparation of Exhibit No. 7-C. Exhibit No. 7-C which consists of nine parts shows the minimum rates and charges computed by the staff rate expert witness under MRT 3-A, charges actually assessed by respondent Frea to respondents Wren and/or Producers, and the resulting undercharges and overpayments for the various livestock

shipments handled by Frea for Wren and/or Producers during the period from January 1 through May 31, 1972. The summary set forth in Exhibit No. 7-C shows undercharges in the amount of \$1,942.18 and overpayments in the amount of \$39.01 leaving a balance of undercharges on livestock shipments by Frea for Wren and/or Producers of \$1,903.17. The staff witness testified that Frea had violated Items 70, 90, 230, 250, and 251 of MRT 3-A in his handling of various shipments included in Exhibit No. 7-C.

Exhibits Nos. 10 and 10-B are copies of forms attached to respondent Union's checks paid to respondent Frea which explain the purpose for which the checks were issued, livestock freight bills, weighmaster's certificates of weights and measures, check stubs showing payments to Union for cows transported by Frea and claimed to be bruised or dead on arrival by the consignees, and statements sent to Union showing amounts due to Frea for livestock shipments. No freight bills were issued for 17 shipments. These documents were used by the Commission staff rate expert witness in the preparation of Exhibit No. 10-C. Exhibit No. 10-C which consists of 30 parts shows the rates and charges actually assessed by respondent Frea to respondent Union, the minimum rates and charges computed by the staff under MRT 3-A, the loss and damage payments by Frea to Union in violation of MRT 3-A, and the resulting undercharges and overpayments for the various livestock shipments handled by Frea for Union during the period from January 1 through May 31, 1972. The summary set forth in Exhibit No. 10-C shows undercharges in the amount of \$1,603.31, loss and damage payments in the amount of \$625.00, overpayments in the amount of \$14.50, leaving a balance of undercharges on livestock shipments by Frea for Union of \$2,213.81. The staff witness testified that Frea had violated Items 70, 90, 230, 250, and 251 of MRT 3-A in his handling of various livestock shipments included in Exhibit No. 10-C.

Exhibit No. 11 contains copies of the check stub, showing payment to Norton of \$270 for cow damage, and the livestock freight bills which were used by the Commission staff rate expert in the preparation of Exhibit No. 11-A. Exhibit No. 11-A consisting of one part shows the rates and charges, less cow damage, actually assessed by Frea to Norton, the minimum rates and charges computed by the staff rate expert witness, and the resulting undercharge in the amount of \$270 for shipments by Frea for Norton on four freight bills dated January 3 and February 7, 21, and 29, 1972. The staff witness testified that Frea had violated Items 90, 250, and 251 in handling the livestock shipments for Norton included in Exhibit No. 11-A.

Exhibit No. 12 is the livestock freight bill which was used by the Commission staff rate expert witness in the preparation of Exhibit No. 12-A. Exhibit No. 12-A consisting of one part shows the rates and charges, less cow damage, actually assessed by Frea to Pacheco, the minimum rates and charges computed by the staff rate expert witness, and the resulting undercharge of \$150 for the shipment by Frea for Pacheco on the livestock freight bill dated February 7, 1972. The staff witness testified that Frea had violated Items 90, 250, and 251 of MRT 3-A in making the deduction of \$150 for the dead heifer from the amount due on shipment.

Exhibit No. 13 consists of copies of the livestock freight bills, public weighmaster's certificates of weight and measure, and invoice No. 8103 dated April 24, 1972 of Corona Livestock Auction for cattle sold to Hanford. No freight bills were issued for 27 shipments. Exhibit No. 13-B includes copies of statements of amounts due to Frea for livestock shipments made for Hanford during the months of January through May of 1972, and a copy of invoice No. 6874 dated January 27, 1972 of Corona Livestock Auction for cattle sold to Hanford. Exhibit No. 19 is a sight draft in the amount of \$8,143.92 drawn by Frea on Hanford dated October 27, 1972 and marked paid October 31, 1972. In 5 shipments Frea showed the applicable minimum rate and charge, or more, on his freight bills but collected flat charges in a lesser amount. The documents in these exhibits were used

by the Commission staff rate expert witness in the preparation of Exhibit No. 13-C. Exhibit No. 13-C which consists of 12 parts shows the rates and charges actually assessed by respondent Frea to respondent Hanford, the minimum rates and charges computed by the staff rate expert witness under MRT 3-A, and the resulting undercharges and overpayments for the various livestock shipments handled by Frea for Hanford during the period from January 1, 1972 through May 31, 1972. The summary set forth in Exhibit No. 13-C shows undercharges in the amount of \$2,446.83 and overpayments in the amount of \$37.60, leaving a balance of undercharges in the amount of \$2,409.23. The staff witness testified that Frea had violated Items 70, 230, 250, and 251 of MRT 3-A in charging Hanford for the various livestock shipments included in Exhibit No. 13-C.

Exhibit No. 14 consists of copies of livestock freight bills, public weighmaster's certificates of weight and measure, and a statement in Part 13 by a staff witness regarding the deduction by Allen of \$100 for the loss of one heifer transported by Frea from the Corona-Chino area to Allen at Tulare. No freight bills were issued for 4 shipments wherein flat charges were collected. These documents were used by the Commission staff rate expert witness in the preparation of Exhibit No. 14-A. Exhibit No. 14-A consisting of 13 parts shows the rates and charges assessed by Frea to Allen, the minimum rates and charges computed by the staff rate expert witness, the resulting undercharges for livestock shipments handled by Frea for Allen during the period from January 1 through May 31, 1972, and the amount of \$100 deducted from transportation charges for loss of one head of livestock, in violation of Items 90, 250, and 251 of MRT 3-A. These undercharges including the \$100 deduction for loss of livestock total \$637.47. For 8 shipments Frea showed the applicable minimum rate and charge on his freight bills but collected flat charges in lesser amounts. The rate expert witness testified that Frea had violated Items 70, 90, 230, 250, 251, and 270 in charging Allen for the various livestock shipments included in Exhibit No. 14-A.

Exhibit No. 15 consists of copies of public weighmaster's certificates of weight and measure and a check stub showing payment to O'Neill of \$158 for a dead heifer. No freight bill was issued. These documents were used by the Commission staff rate expert witness in the preparation of Exhibit No. 15-A. Exhibit No. 15-A which consists of one part shows the rate and charge assessed by Frea to O'Neill for a livestock shipment on January 29, 1972 in the amount of \$155, the loss claim of \$158 paid by Frea to O'Neill, and the minimum rate and charge of \$267.03 computed by the staff rate expert, resulting in an undercharge of \$270.03. The staff witness testified that Frea had violated Items 70, 90, 250, 251, and 270 of MRT 3-A in charging O'Neill for the livestock shipment included in Exhibit No. 15-A.

Exhibit No. 16 consists of copies of public weighmaster's certificates of weight and measure, driver's daily log, and livestock freight bill which were used by the Commission staff rate expert in the preparation of Exhibit No. 16-A. No freight bills were issued for 2 shipments. Exhibit No. 16-A which consists of three parts shows the rates and charges assessed by Frea to Nunes, the minimum rates and charges computed by the staff rate expert, and the resulting undercharges on livestock shipments made by Frea for Nunes on March 23 and May 25, 1972. The undercharges on these shipments total \$168.13. The staff witness testified that Frea had violated Items 70, 230, 250, 251, and 270 of MRT 3-A in charging Nunes for the various livestock shipments included in Exhibit No. 16-A.

The net undercharges included in Exhibits Nos. 7-C, 10-C, 11-A, 12-A, 13-C, 14-A, 15-A, and 16-A total \$8,021.84.

Exhibit No. 17 summarizes the violations by Frea of the "collection of charges" rule, Item 230 of MRT 3-A. This exhibit shows that as of May 31, 1972 Frea's freight bills involving intrastate shipments which were delinquent over 90 days totaled \$2,515.19, those delinquent over 60 days totaled \$730.37, and those delinquent over 30 days totaled \$2,306.94, and that charges totaling \$12,101.41 for intrastate shipments for which no freight bills were issued were delinquent over 90 days.

Exhibit No. 20 is a copy of Citation Forefeiture for Violation of Public Utilities Code from this Commission addressed to Frea and dated January 3, 1972. Exhibit No. 20 cites Frea for having violated Section 3737 of the Public Utilities Code and Item 130 of MRT 3-A by failing to obtain a weighmaster's certificate and by failing to furnish written notification to the Secretary of the Public Utilities Commission of the failure to obtain the required certificate. An alternate fine of \$100 was imposed upon Frea by the citation. Exhibit No. 21 is a copy of an Official Notice dated January 3, 1972 from the Compliance and Enforcement Branch of the Commission admonishing Frea for violation of Section 3737 of the Public Utilities Code for failure to comply with the provisions of MRT 3-A and for violation of Item 250 of MRT 3-A.

Discussion

The Commission staff requests that the Commission find that:

1. Frea has violated Item 70 of MRT 3-A, the units of measurement rule, by making flat charges for shipments of livestock instead of charges in accordance with the units of measurement set forth in Item 270 of MRT 3-A.

2. Frea has violated Item 90 of MRT 3-A by paying, or permitting the deduction from charges for livestock transportation, of amounts for loss or damage claims to livestock without proper documentation in accordance with Items 250 and 251 and without satisfactory evidence that the loss or damage was caused by the negligence of the carrier.

3. Frea has violated Item 230 of MRT 3-A, the collection of charges rule, by not making collections from shippers of livestock in accordance with the requirements of this rule and by extending credit to shippers of livestock beyond the credit period specified in such rule.

4. Frea has violated Items 250 and 251 of MRT 3-A, the issuance of shipping documents rule, by failing to have written agreements for carriage executed for livestock shipments, by failing to issue freight bills to debtors for shipments of livestock, and by failing to maintain records of weights of livestock shipments.

5. Frea has violated Item 270 of MRT 3-A, distance commodity rates, by charging rates for livestock shipments which are lower than the minimum rates and charges authorized in Item 270.

Counsel for the Commission staff in his closing argument urged that the Commission impose upon Frea (1) a fine of \$8,021.84 pursuant to Section 3800 of the Public Utilities Code by reason of the undercharges and (2) the maximum punitive fine of \$5,000 pursuant to Section 3774 of the Public Utilities Code by reason of the violations of Items 70, 90, 230, 250, 251, and 270 of MRT 3-A. The staff counsel also requested the Commission issue an order requiring Frea to cease and desist charging and collecting compensation for the transportation of property in a lesser amount than the minimum rates and charges prescribed by the Commission.

The appearance for Frea in his closing statement requested that the undercharge set forth in Part 11 of Exhibit No. 13-C be deducted from the \$8,021.84 net undercharges because the shipper was Habib Cattle Company rather than Hanford and hence this shipment is outside the scope of this Commission's investigation. He stated that the shipper of the livestock shipments included in Exhibit No. 7-C is Producers and not Wren. He pointed out that the loading and unloading of cattle is often done without a representative of the shipper being present and consequently the documentation of claims for loss and damage to cattle is difficult. He further stated that many of Frea's violations of MRT 3-A were the result of misunderstandings and misinterpretation of the rules. Frea only had a bookkeeper to assist him with the rating and billing of the shipments. He pointed out that Frea was cooperative with the Commission staff

representative in furnishing information and making his records available for examination and copying. The representative contends that it would be improper to levy a maximum punitive fine of \$5,000 upon Frea.

The overpayments shown in Exhibits Nos. 7-C, 10-C, and 13-C are in reality not overpayments but charges higher than those set forth in MRT 3-A, the minimum charges required to be collected. Therefore, it would not be necessary to deduct such charges from the undercharges found to have been made by Frea. However, in view of the presentation made by the staff in this proceeding, such deductions will be made in determining the fine to be levied pursuant to Section 3800 of the Public Utilities Code and in determining the amounts of the undercharges to be collected from the shippers.

Findings

1. Frea operates pursuant to a highway contract carrier permit and a radial highway common carrier permit.
2. Frea was served with copies of MRT 3-A and Distance Table 7, and applicable supplements and additions thereto.
3. The undercharge in the amount of \$234 set forth in Part 11 of Exhibit No. 13-C should be deducted from the net undercharges shown in Exhibit No. 13-C because the shipper was Habib Cattle Company and not Hanford.
4. Frea charged less than the lawfully prescribed minimum rates (1) in the amount of \$1,903.17 as set forth in Exhibit No. 7-C (Wren and/or Producers), (2) in the amount of \$2,213.81 as set forth in Exhibit No. 10-C (Union), (3) in the amount of \$270 as set forth in Exhibit No. 11-A (Norton), (4) in the amount of \$150 as set forth in Exhibit No. 12-A (Pacheco), (5) in the amount of \$2,175.23 as set forth in Exhibit No. 13-C (Hanford), excluding Part 11, (6) in the amount of \$637.47 as set forth in Exhibit No. 14-A (Allen), (7) in the amount of \$270.03 as set forth in Exhibit No. 15-A (O'Neill), and (8) in the amount of \$168.13 as set forth in Exhibit No. 16-A (Nunes), resulting in undercharges in the total amount of \$7,787.84.

5. Frea has violated Item 70 of MRT 3-A, the units of measurement rule, by making flat charges for shipments of livestock instead of charges in accordance with the units of measurement set forth in Item 270 of MRT 3-A.

6. Frea has violated Item 90 of MRT 3-A by paying, or permitting the deduction from charges for livestock transportation, of amounts for loss or damage claims to livestock without proper documentation in accordance with Items 250 and 251 of MRT 3-A, and without satisfactory evidence that the loss or damage was caused by the negligence of Frea.

7. Frea has violated Item 230 of MRT 3-A, the collection of charges rule, by not making collections from shippers of livestock in accordance with the requirements of this rule, and by extending credit to shippers of livestock beyond the credit period specified in such rule, as set forth in Exhibit No. 17.

8. Frea has violated Items 250 and 251 of MRT 3-A, the issuance of shipping documents rule, by failing to have written documents for carriage executed for livestock shipments, by failing to issue freight bills to debtors for shipments of livestock, and by failing to maintain records of weights of livestock shipments.

9. Frea has violated Item 270 of MRT 3-A, distance commodity rates, by charging rates for livestock shipments which are lower than the minimum rates and charges authorized in Item 270.

Based upon the foregoing findings of fact the Commission concludes that Frea has violated Sections 3664 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$7,787.84 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$3,000.

The Commission expects that Frea will proceed promptly, diligently, and in good faith to pursue 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 Frea 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. William Frea, Jr. (Frea), shall pay a fine of \$3,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the sixtieth day after the effective date of this order. Frea shall pay interest at the rate of seven percent per annum on the fine. Such interest is to commence upon the day the payment of the fine is delinquent.

2. Frea shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$7,787.84 on or before the ninetieth day after the effective date of this order.

3. Frea shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 4, and shall notify the Commission in writing upon collection.

4. Frea 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, Frea shall file with this Commission, on the first Monday of each month after the end of the sixty days, a report of 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. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of the operating authority of Frea until the report is filed.

5. Frea 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 respondent Frea and to cause service by mail of this order to be made upon all other respondents. 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 2nd
day of APRIL, 1974.

Vernon L. Stevens
President
William Simpson
[Signature]
[Signature]
[Signature]
Commissioners