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ORIGINAL

Decision No. 82807

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of CRAIG A. SCHECKLA, JAMES W. SCHECKLA, TIDEWATER INDUSTRIES, INC., a corporation doing business as BONNIE SALES CO., CONTAINER COMPONENT CORPORATION, a corporation, and OREGON PACIFIC INDUSTRIES, INC., a corporation.

Case No. 9640
(Filed December 7, 1973)

James W. Scheckla, for himself, respondent.
Walter H. Kessenick, 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 Craig A. Scheckla and James W. Scheckla (Scheckla), for the purposes of determining whether they charged less than minimum rates in connection with the transportation of lumber and wooden box or crate material for Tidewater Industries, Inc., doing business as Bonnie Sales Co. (Bonnie Sales), Container Component Corporation (Container), and Oregon Pacific Industries, Inc. (OPI).

Public hearing was held before Examiner Mooney in Eureka on March 20, 1974, 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. Scheckla operates pursuant to a radial highway common carrier permit.

2. During June, October, and December 1972 a representative of the Commission staff conducted an investigation of the operations of Scheckla. All billing was done by an employee of Scheckla's accountant, and all freight bills, underlying documents, and other business records were reviewed by the representative at the accountant's office.

3. The investigation disclosed 119 instances wherein Scheckla had transported shipments for Container and had applied lumber rates. The material shipped in each instance consisted of slats and cleats. The person in charge of Container's mill informed the representative that they were to be used for celery crates. The correct rating for these items is wooden box or crate material. The investigation also disclosed two instances in connection with the transportation of lumber for Bonnie Sales and six instances in connection with similar transportation for OPI wherein a freight bill was not tendered to the shipper and no charges were collected for the services performed. Other records reviewed by the representative disclosed arrangements whereby agreed charges per trip or per 1,000-board feet were to be assessed for the transportation performed for the two shippers; that the charges on all freight bills actually tendered to the two shippers were based on applicable minimum rates; that when the billed charges sufficiently exceeded the agreed charges, a free load was transported; and that by so doing, the total charges paid by both shippers for all transportation performed did not exceed those that would accrue under the agreed arrangement.

4. At the time of the staff investigation, Scheckla had a terminal near Blue Lake; operated one truck, two tractors, two semi-trailers, and one full-trailer; had two drivers and an accountant; and had all applicable minimum rate tariffs and distance tables. Scheckla's gross operating revenue for the year 1972 was \$63,991.

5. The rate errors referred to in Finding 3 are summarized in the staff's Exhibits 5 (Container), 6 (Bonnie Sales), and 7 (OPI). The minimum rates and charges computed by the staff in Exhibits 5, 6, and 7 are correct.

6. Scheckla charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 5 (Container), 6 (Bonnie Sales), and 7 (OPI) in the amounts of \$1,862.70, \$776.88, and \$2,528.55, respectively. The total of the undercharges in the three exhibits is \$5,168.13.

7. Scheckla was cooperative with the Commission staff during the investigation.

Discussion

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

We are of the opinion that Scheckla should be directed to collect the undercharges found herein and that a fine in the amount of the undercharges plus a punitive fine of \$750 should be imposed on Scheckla. In arriving at the punitive fine, we have taken into consideration the assertions made in Scheckla's closing statement that Container insisted that the transportation performed for it was subject to the lumber rates and would not pay more; that the transportation included in the investigation is the only transportation that was performed by Scheckla during this period; that prior thereto Scheckla had operated exclusively as a subhauler; that Scheckla no longer performs any transportation services for the three involved shippers; that Scheckla is now exclusively engaged in the transportation of logs which are exempt from minimum rate regulation; and that the facts and circumstances herein do not warrant the imposition of any punitive fine whatsoever. However, it is a well settled principle that it is the carrier's responsibility to assess and collect the correct minimum rates and charges and that any errors resulting from reliance upon a shipper or any one else or from lack of knowledge on the carrier's part is no excuse for rate errors.

Container, Bonnie Sales, and OPI are placed on notice that if any of them are to engage in any improper arrangements with permitted carriers or refuse to pay applicable minimum rates and charges for the transportation of their property, they may be in violation of Sections 3669 and 3670 of the Public Utilities Code and could be subject to the penalties specified in Sections 3802 and 3804 thereof.

Conclusions

1. Scheckla violated Sections 3664, 3668, and 3737 of the Public Utilities Code.

2. Scheckla should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$5,168.13 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$750.

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

The Commission expects that Scheckla 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 Scheckla or their 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. Craig A. Scheckla and James W. Scheckla shall pay a fine of \$750 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. They 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. The Schecklas shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$5,168.13 on or before the fortieth day after the effective date of this order.

3. The Schecklas shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 6, and shall notify the Commission in writing upon collection.

4. The Schecklas 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, respondents 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. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of the Schecklas' operating authority until the report is filed.

5. The Schecklas 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 respondents Scheckla 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 30th day of APRIL, 1974.

William Sturgson President
[Signature]
[Signature]
[Signature]
[Signature] Commissioners

Commissioner Vernon L. Sturgson, being necessarily absent, did not participate in the disposition of this proceeding.