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ORIGINAL

Decision No. 83070

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of OSBORNE HIGHWAY EXPRESS, a California corporation, MASONITE CORPORATION, a corporation, CLYDE GRAVES, an individual, GEORGE NUNNENKAMP, an individual, GLOBE INTERNATIONAL OF CALIFORNIA, INC., a corporation, GLOBE INTERNATIONAL OF NORTHERN CALIFORNIA, INC., a corporation, and UNIFLEX CONTAINER CORPORATION, a corporation.

Case No. 9677  
(Filed March 12, 1974)

James R. Foote, for Associated Independent Owner Operators, Inc., interested party.  
Freda E. Abbott, 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, and practices of Osborne Highway Express (Osborne), a corporation, for the purpose of determining whether Osborne charged less than minimum rates in connection with transportation performed for Masonite Corporation (Masonite), Globe International of California, Inc. (Globe), Globe International of Northern California, Inc. (G-INC), and Uniflex Container Corporation (Uniflex), and whether Osborne hired Clyde Graves (Graves) and George Nunnenkamp (Nunnenkamp) as subhaulers at a time when neither held operating authority to engage in such operations.

Public hearing was held before Examiner Mooney in San Francisco on May 23, 1974, on which date the matter was submitted. All facts and issues were stipulated to by Osborne and the Commission staff. No one appeared in opposition to the stipulation which was received in evidence as Exhibit 1.

Findings

1. Osborne operates pursuant to radial highway common carrier and highway contract carrier permits.
2. During May and August 1973, a staff representative conducted an investigation of Osborne's operations for the first four months of 1973.
3. The staff investigation disclosed rate errors in connection with the transportation of wood and wood products for three of the respondent shippers and trailer chassis for Uniflex. The rate errors resulted from failure to assess off-rail charges, improperly consolidating shipments, assessing flat charges, and the assessment of incorrect rates.
4. The rate errors referred to in Finding 3 are summarized in Parts A (Masonite), B (Globe), C (G-INC), and D (Uniflex) of Appendix 4 to Exhibit 1. The minimum rates and charges computed by the staff in the summaries are correct.
5. Osborne charged less than the lawfully prescribed minimum rates in the instances set forth in Parts A (Masonite), B (Globe), C (G-INC), and D (Uniflex) of Appendix 4 to Exhibit 1 in the amounts of \$31.09, \$947.64, \$134.77, and \$2,109.50, respectively. The total of the undercharges in the four parts is \$3,273.
6. The staff investigation further disclosed that Osborne employed Graves and Nummenkamp as subhaulers and that both operated as subhaulers during July 1973 at which time neither of them held authority from the Commission to perform such operations.
7. Graves was issued a highway contract carrier permit on October 29, 1973, and never held any operating authority from the Commission prior to that date.

8. Nunnenkamp has never been issued any operating authority by the Commission.

9. At the time of the staff investigation, Osborne had its headquarters office in Berkeley, a terminal in Ukiah, and dispatch offices at the ports in Long Beach and Oakland; operated 40 sets of 26-foot trailers, 40 dollies, and two shuttle trucks; was provided with power equipment by subhaulers; had 11 employees; was provided management service by Wise Investment, Inc., which was solely owned by Osborne's president; and had all applicable minimum rate tariffs and distance tables. Osborne's gross operating revenue for the year 1973 was \$2,041,801 from its intrastate operations and \$219,786 from its interstate operations.

10. Osborne commenced operations in May 1972 and has experienced a rapid growth. All of the rate errors herein were unintentional and due to lack of rate knowledge by Osborne's personnel and occurred prior to its hiring a full time rate man in May 1973. With a full time rate man, it has been able to avoid further rate errors.

#### Conclusions

1. Osborne violated Sections 3664, 3667, and 3737 of the Public Utilities Code.

2. Osborne should pay a fine, pursuant to Section 3800 of the Public Utilities Code, in the amount of \$3,273 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$750.

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

4. Graves violated Sections 3541, 3543, and 3571 of the Public Utilities Code.

5. Graves' operating authority should be suspended pursuant to Section 3774 of the Public Utilities Code for a period of one month with the execution thereof deferred until further order of the Commission. If, at the end of one year, no further order is issued, the suspension should be automatically vacated.

6. Nunnenkamp violated Sections 3541, 3543, and 3571 of the Public Utilities Code.

7. Graves and Nunnenkamp should be directed to cease and desist from operating as highway carriers at any time during which they do not hold the required operating authority from this Commission.

The Commission expects that Osborne 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 Osborne or its 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. Osborne Highway Express, a corporation, 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. Osborne Highway Express, a corporation, 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. Osborne Highway Express, a corporation, shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$3,273 on or before the fortieth day after the effective date of this order.

3. Osborne Highway Express, a corporation, shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 5, and shall notify the Commission in writing upon collection.

4. Osborne Highway Express, a corporation, 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. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of Osborne Highway Express' operating authority until the report is filed.

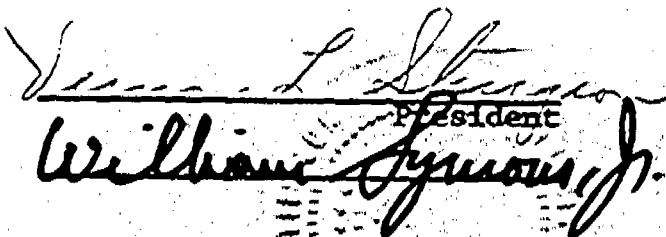
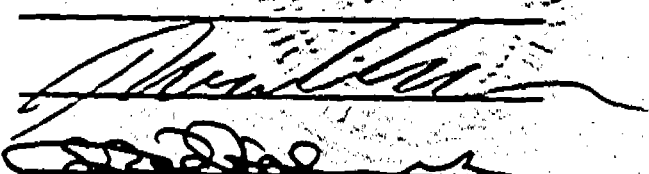
5. Osborne Highway Express, a corporation, shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

6. Highway Contract Carrier Permit No. 10-56-97 issued to Clyde Graves is suspended for a period of one month; provided, however, that the execution thereof is deferred pending further order of the Commission. If no further order is issued affecting the suspension within one year from the date of issuance of this decision, the suspension shall be automatically vacated.

7. Clyde Graves and George Nummenkamp shall cease and desist from operating as a highway carrier at any time during which they do not hold the required operating authority from the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondents Osborne Highway Express, a corporation, Clyde Graves, and George Nunnenkamp 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 JULY, 1974.

  
President  
  
Commissioners

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