

Decision No. 83449

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)
Semper Truck Lines, Incorporated,)
a California corporation; and)
Oregon Pacific Industries, Inc.,)
an Oregon corporation.)

Case No. 9500
(Filed January 23, 1973)

Charles B. Flood, III, Attorney at Law,
for Semper Truck Lines, Inc., and
Ralph Cardwell, for Oregon Pacific
Industries, respondents.
W. C. Bricca, Attorney at Law, and
E. E. Cahoon, for the Commission
staff.

O P I N I O N

The Commission instituted this proceeding for the purpose of determining whether Semper Truck Lines, Incorporated (Semper) charged less than applicable minimum rates for transportation performed for Oregon Pacific Industries, Inc. (Oregon Pacific) and whether Semper had failed to bill and collect as required by the credit rule of the applicable minimum rate tariff. The under-charge inquiry was directed at shipments of lumber performed between June 11, 1971 and January 17, 1972; the credit rule inquiry was concerned with shipments of the same commodity occurring between October 27, 1971 and March 6, 1972.

After due notice hearing was held in Fresno before Examiner Gilman on April 4 and 5, 1973.

The staff contended that the following violations had occurred in the transactions identified as follows:

1. Improper documentation of split delivery shipments: Parts 1, 2, 3, 4, 5, 7, 8, 13, 20, 26, 29, and 30 (Item 172, MRT 2).
2. Improper documentation of multiple lot shipments: Parts 9, 10, 11, 12, 14, 21, 22, 24, 25, 27, 28, and 31 (Item 85, MRT 2).
3. Charging an improper common carrier rate: Parts 8, 10, 12, and 14.
4. Use of rail rates when no rail routing available: Parts 2, 4, 8, 13, and 26.
5. Use of rail rates only in connection with non-railhead shipments: Parts 1, 2, 6, 7, 10, 12, 14 through 29 and 31 and 32.

The staff contended that in combination these violations had produced undercharges in the sum of \$4,422.22. In addition the staff alleged that Semper had failed to bill many of these shipments within the seven-day period provided in Item 250 of Minimum Rate Tariff 2 (MRT 2) and took the position that Semper was required by that same item to collect within the prescribed period, and had failed to do so. The shipper in effect conceded the undercharges and established that it had paid them. Semper contended that it had attempted in good faith to charge proper rates and make timely billings. It further contended that erroneous use of the rail alternative rates was due to the fact that carrier personnel were inexperienced and had justifiably relied on inaccurate information. It further contended that it had substantially complied with the timing requirements of the documentation rules and that the staff interpretation of the execution provisions of those rules was erroneous. It was also contended that Semper had taken effective action, including employment of counsel, to ensure timely collection of freight charges, and that those efforts had effectively reduced collection problems. The staff sought a punitive fine of \$1,000, a

fine in the amount of the undercharges, an order to collect undercharges, and a cease and desist order.

The staff called a transportation representative to testify to the details of his investigation of the transportation in question and his observations of some of the points of origin and certain mileages necessary for the rating purposes. The staff also called a second staff witness to testify to the off-rail character of other locations. A staff rate expert presented his opinion as to the proper rates which should have been assessed on Parts 1 through 32. Exhibits covering copies of the shipping documents taken from Semper's files, a rate statement setting forth the rate expert's conclusions, points of shipment origin and destination rail facility information, carrier economic data, Item 250 of MRT 2, and collection of charges were introduced and received in evidence.

Respondent Semper called the corporation's secretary-treasurer who testified as to the office practices followed in rating shipments and in obtaining documentation for split delivery or multiple shipments. Respondent's counsel testified concerning his efforts to collect freight bill charges.

Carrier Data

Respondent Semper has both a radial highway common carrier and a highway contract carrier permit issued by this Commission. All appropriate tariffs were served on the carrier. It has 24 employees, and operates 18 tractors and 37 trailers. Its gross operating revenue for the year ending September 30, 1972 was \$782,524. The carrier has not had any past history of violation of Commission orders, directives, or tariffs. Its terminal is located in Pinedale, California, near Fresno.

Documentation Failures

Item 172 of MRT 2 provides in part:

- "2. The carrier shall not transport a split delivery shipment unless at the time of or prior to the initial pickup of any portion of the shipment,

an appropriate written document is issued by the consignor for each component part, said document containing all the information required to prepare a bill of lading in compliance with the provisions of Item 360 of the governing classification. In addition the consignor shall provide the carrier with a single document containing written information setting forth in summary the total numbers and kind of packages description of articles, and total weight of all commodities described on the bills of lading for each component part. Said document shall also reflect the total number of pieces and total weight of all commodities in the shipment and must make reference by number or other individual identity to each bill of lading issued for component parts.

* * *

- "4. ...if written information does not conform with the requirements of paragraph 2..., each component part of the split delivery shipments shall be rated as a separate shipment under other provisions of this tariff."

Item 85 provides in part:

- "2. The carrier shall not transport a multiple lot shipment unless prior to or at the time of the initial pickup written information has been received from the consignor describing the kind and quantity of property which will constitute the multiple lot shipment. Preparation by the shipper of the required single multiple lot document for the entire shipment referred to in paragraph 3 of this item for execution by the shipper and carrier prior to or at the time of initial pickup will constitute compliance with this paragraph.
- "3. ...If any of the property described in the single multiple lot document is picked up without complying with the foregoing provisions each such pickup shall be rated as a separate shipment under other provisions of this tariff..."

If each component is rated as a separate shipment, the resulting charges will be substantially higher than if they can be rated as a single split delivery or a multiple lot shipment.

During the greater part of the review period the following procedure was followed in preparing documentation for split delivery and multiple lot shipments: An Oregon Pacific representative would telephone respondent Semper's office and furnish it with sufficient information to fill in a "confirmation of order" document devised by the carrier. The information received was substantially that required under either Item 172 or Item 85. Respondent Semper would reduce the information to writing, sign the confirmation form, and mail it to Oregon Pacific's Fullerton office to be signed and returned by mail.^{1/} The trucks would be dispatched and would pick up the goods regardless of whether the confirmation of order form had been returned by mail to respondent Semper.

During the latter part of the review period, the shipper could not be relied on to return the confirmation of order form. As a result respondent stopped preparing it, but continued to prepare master bills of lading as well as individual component shipment bills. Copies of these documents were eventually provided to the shipper but were never formally adopted by it. In Parts 7, 27, 28, 30, and 31 no confirmation of order form was found in the carrier's records; inferentially these transactions are examples of this procedure.

The staff argues that the earlier procedure violates the tariff in two respects--first, that the documents were not transmitted in time, and, second, that the carrier rather than the shipper prepared them.

The record supports an inference that the master documents were not actually returned to Semper's place of business at or prior to the time of first pickup.

^{1/} Parts 1, 2, 4, 5, 8, 9, 10, 11, 12, 13, 14, 20, 21, 22, 24, 25, 26, and 29 exemplify this procedure.

Item 85 provides that both the consignor and the carrier must issue documentation for a multiple lot shipment, except that if the consignor prepares the carrier's document for execution by both, compliance has been achieved. However, the reverse is not true. Item 85 does not permit the carrier to issue documentation which is required to be issued by the consignor. To hold otherwise would nullify the provisions of paragraph (a)2 of the item. Consequently, Oregon Pacific must be held liable for the payment of the single shipment rate in each instance where the documentation was not timely. A Section 3800 fine in the amount of these undercharges should be imposed to ensure that Semper does not obtain a windfall, as a result of its collection of the undercharges.

As indicated above, no master document was provided or adopted by the shipper for five transactions (Parts 7, 27, 28, 30, and 31). Semper nevertheless used the lower single shipment rate in these transactions; in these instances Semper violated both the letter and spirit of the documentation rules. Oregon Pacific is, of course, also responsible for payment of the undercharges resulting from these violations, and a Section 3800 fine should also be imposed for the reasons stated above.

Collection of Charges

Item 250 of MRT 2 provides, insofar as pertinent to the issues herein, as follows:

"COLLECTION OF CHARGES"

- "(a) Except as otherwise provided in this rule, transportation and accessorial charges shall be collected by the carriers prior to relinquishing physical possession of shipments entrusted to them for transportation.

"(b) Upon taking precautions deemed by them to be sufficient to assure payment of charges within the credit period herein specified, carriers may relinquish possession of freight in advance of the payment of the charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein being called shippers, for a period of 7 days, excluding Sundays and legal holidays other than Saturday half-holidays. When the freight bill covering a shipment is presented to the shipper on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following delivery of the freight. When the freight bill is not presented to the shipper on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following the presentation of the freight bill.

* * *

"(d) Freight bills for all transportation and accessorial charges shall be presented to the shippers within 7 calendar days from the first 12 o'clock midnight following delivery of the freight.

"(e) Shippers may elect to have their freight bills presented by means of the United States mail, and when the mail service is so used the time of mailing by the carrier, as evidenced by the postmark shall be deemed to be the time of presentation of the freight bills.

"(f) The mailing by the shipper of valid checks, drafts, or money orders, which are satisfactory to the carrier, in payment of freight charges within the credit period allowed such shipper may be deemed to be the collection of the charges within the credit period for the purpose of these rules. In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time."

The Commission staff contends that respondent violated provisions of paragraph (d) of the above rule by not billing Oregon Pacific within the seven-day period provided in that paragraph and that respondent violated paragraph (b) of the above rule by not collecting freight charges from the shipper within the time period specified in that paragraph.

The record shows by testimony of the staff witnesses and of respondent's secretary-treasurer that Semper customarily billed OPI on a bimonthly basis. The testimony of Semper's witness was that some of the shipments appearing on the bimonthly freight bill had been billed separately within the allowable seven-day period. A review of the documents submitted by the staff shows that such separate billings were not made. It is apparent from the time span between billing periods that a substantial number of shipments included on each bimonthly billing had been delivered more than seven days prior to the billing date. Such method of billing constitutes a violation of paragraph (d) of Item 250 of MRT 2.

Respondent and the staff entered into a stipulation as to the billing and payment dates of shipments involved in this proceeding.2/

2/

Shipments Contained in Exhibit 5 (Staff)

<u>Invoice Dated</u>	<u>Amount Billed</u>	<u>Date Collected</u>	<u>Amount Collected</u>
Jan. 3, 1972	\$16,320.69	Jan. 31, 1972	\$16,320.69
Jan. 24, 1972	26,151.75	Feb. 28, 1972	25,716.75
Feb. 7, 1972	31,222.22	Apr. 4, 1972	30,861.97
Feb. 23, 1972	27,409.84	Apr. 24, 1972	25,621.45
Mar. 13, 1972	25,366.77	Apr. 24, 1972	26,090.37

This Commission has consistently held that failure to collect freight charges within the time period specified in paragraph (b) of Item 250 of MRT 2 constitutes a device which permits persons to obtain transportation of property at rates less than the minimum rates (Hobbs Trucking Co. (1970) 70 CPUC 699 and Decision No. 81718 dated August 14, 1973 in Case No. 5432, Petition 731 (Revision of Collection of Charges rule)). Fines have been imposed on carriers involved in penalty cases in the several instances where it has been shown that the carriers failed to collect freight charges in the specified period provided in the tariff.^{3/} The stipulation contained in the record shows that the periods between dates of billing and collection are in excess of the maximum period permitted in paragraph (b) of Item 250, therefore the carrier violated the provisions of Item 250 of MRT 2 in connection with the shipments included in Exhibit 5.

^{3/} For example:

<u>Case No.</u>	<u>Decision No.</u>	<u>Respondent Carrier</u>	<u>Fine</u>
8935	76624 (12-30-69)	Fast Transportation	\$ 350 Punitive
8960	76799 (2-17-70)	Orlo M. Hobbs	1,000 Punitive
			2,484 Interest Ocvt
8979	76682 (1-20-70)	Kerner Trucking Sv., Inc.	200 Punitive
8982	76828 (2-20-70)	A. V. Schnelle Equip., Inc.	250 Punitive
8984	76766 (2-10-70)	Morning-Afternoon Delivery	150 Punitive
9576	82108 (11-13-73)	Osterkamp Trucking	1,500* Punitive
9014	77430 (6-30-70)	Winans Bros. Trucking Co.	1,000* Punitive

*Includes other types of violation in addition to credit rule.

Counsel for respondent testified that he was employed to assist in the collection with the delinquent billings involved herein and that the carrier exerted every effort possible to it to collect the charges involved. The actions of the carrier in this respect mitigate the seriousness of the offense found to have occurred in the above paragraph, but such efforts do not remove that offense. The mitigating circumstances with respect to billing and collection failures will be given recognition in the amount of the punitive fine set forth in the order herein.

Other Rating Errors

In 24 parts the carrier misapplied rail alternative common carrier rates in the mistaken belief that mills at Fort Bragg and Redcrest were on rail. In mitigation the carrier claimed that it was very difficult to obtain reliable information as to the on-rail status of remote points and that it relied on apparently reliable sources.

In three instances the carrier used a superseded rail rate. In other instances it used a rail alternative rate when in fact no rail routing was available. In mitigation the carrier indicated that it had from time to time asked the Commission's Fresno office and local railroad offices for rating information. When neither of these sources of information proved useful, it acquired a summary of rail rate information prepared by the lumber industry and relied on it. The record indicates that the Commission's enforcement personnel relied on the same document in selecting shipments for rating.

The carrier should by now be fully convinced that erroneous use of common carrier alternative rates is a serious matter, and that it is necessary to sharply upgrade its rating skills, if it is to continue using them. A punitive fine of \$500 should be imposed in view of the several types of violations found to have occurred. The carrier has collected the undercharges involved; however, to avoid giving the carrier a windfall as the result of these errors, a Section 3800 fine in the amount of the undercharges will be imposed.

Findings

1.a. In shipments, Parts 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, and 31, Oregon Pacific dictated the information required for a master document to respondent Semper over the telephone, and respondent Semper reduced the information to writing and signed the writing; the writing was mailed to Oregon Pacific for signing, signed, and returned by mail to respondent Semper.

b. In no instance was the document returned to Semper prior to or at the time of the first pickup.

c. In shipments, Parts 7, 27, 28, 30, and 31, no master document was returned to respondent Semper at any time.

d. In all shipments referred to in this finding, respondent Semper rated the transactions as multiple lot or split delivery shipments.

2.a. In shipments, Parts 1, 2, 6, 7, 10, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, and 32, the point of origin was off-rail and respondent Semper failed to assess an off-rail charge.

b. In Part 15, the destination was off-rail and respondent Semper failed to assess an off-rail charge.

c. In Parts 2, 4, 8, 13, and 26, no rail routing was available and respondent Semper used rail alternative rates.

d. In Parts 3, 8, 10, 12, and 14, respondent Semper used an improper rail rate.

3. The total undercharges resulting from the facts set forth in Findings 1 and 2 amount to \$4,422.22.

4. A fine of \$4,422.22 in the amount of the undercharges should be imposed.

5. Respondent has not complied with provisions of paragraphs (b) and (d) of Item 250 of MRT 2 with respect to the time in which charges were billed and in which charges were collected.

Conclusions

1. Respondent Semper charged less than the applicable minimum rates by not charging the separate shipment rate for composite shipments when the first pickup was made before the signed master document was returned to it.

2. Respondent Semper charged less than the applicable minimum rates and violated Sections 3664 and 3737 of the Public Utilities Code by using superseded common carrier rates and by failing to make the required charges for off-rail origins and destinations.

3. Respondent violated the "Collection of Charges" provisions of MRT 2.

O R D E R

IT IS ORDERED that:

1. Semper Truck Lines, Incorporated shall pay a fine of \$500.00 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Semper Truck Lines, Incorporated 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. Semper Truck Lines, Incorporated shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$4,422.22 on or before the fortieth day after the effective date of this order.

3. Semper Truck Lines, Incorporated 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 Semper Truck Lines, Incorporated and to cause service by mail of this order to be made upon Oregon Pacific Industries, Inc. The effective date of this order as to each respondent shall be twenty days after completion of service on that respondent.

Dated at Los Angeles, California, this 17th day of SEPTEMBER, 1974.

Labitau
William Lynovs. J.

Leslie L. Stegman
President
J. P. [unclear]
[unclear]
[unclear]
Commissioners