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Decision No. 83713

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Folger Athearn, Jr. DBA ATHEARN &
COMPANY,

Complainant,

vs.

Alltrans Express California, Inc.,
et al.,

Defendants.

Case No. 9650
(Filed January 14, 1974)

(Appearances are listed in Appendix A.)

O P I N I O N

On January 14, 1974 complainant, a freight traffic consultant, authorized by and representing numerous shippers, filed his complaint alleging that defendants Alltrans Express California, Inc.; A-1 Express Delivery Service; Associated Freight Lines; Beckman Express & Warehouse; Complete Trucking Service; Crescent Truck Lines; Doudell Trucking Company; Eagle Truck Lines, Inc.; East Bay Drayage & Warehouse Co.; Golden West Freight Lines; Haslett Trucking; Hills Transportation Co.; Mission Cities Freight Lines; Peters Truck Lines; Rossi Freight Lines, Inc.; Smiser Freight Service; Sterling Transit Co., Inc.; System 99; and Victory Transportation Service, Inc. collected more compensation for the transportation of property than the applicable rates and charges set forth in defendants' tariffs in effect at the time the transportation was performed.

Complainant seeks an order from the Commission directing defendants to promptly refund all overcharges plus interest of 7 percent per annum; fining each defendant in accordance with Section 2107 of the Public Utilities Code for each overcharge found not to be refunded within a reasonable period of time; establishing 30 days from the date an overcharge claim is received by the carrier as a reasonable time for acknowledging, paying, or otherwise making final disposition of overcharge claims; and requiring carriers not refunding overcharges plus 7 percent interest per annum within the prescribed 30 days to advise both the Commission and the claimant in writing of the reason for the delay and when disposition can be expected.

On March 12, 1974 the Commission entered its preliminary order, Decision No. 82570, which pursuant to complainant's request dismissed Peters Truck Lines and Smiser Freight Service as defendants.

A prehearing conference was held in San Francisco on June 11, 1974 and in Los Angeles on June 12, 1974.

It was determined at the conferences that the following had satisfied the overcharge claims and paid 7 percent interest: Associated Freight Lines; A-1 Express Delivery Service; Complete Trucking Service; and Sterling Transit Co., Inc.

It was also determined that the following had satisfied the overcharge claims but did not pay the 7 percent interest: Alltrans Express California, Inc.; Crescent Truck Lines; Doudell Trucking Company; Haslett Trucking; Mission Cities Freight Lines; System 99; Golden West Freight Lines; and Hills Transportation Co.

With respect to the payment of the 7 percent interest, the parties represented at the conferences agreed to allow the Commission to enter a decision based upon the merits of the contention without the taking of evidence.

With respect to complainant's prayer that each defendant be fined in accordance with Section 2107 for each overcharge found not to have been refunded to complainant within a reasonable time after receipt of the overcharge claim, complainant was directed to submit in exhibit form, as to each defendant who had satisfied the claims, the following information as to each claim: (1) the date of the freight bill, covering each shipment, (2) the date the freight bill was paid, (3) the date the claim was submitted, and (4) the date the claim was satisfied. Said exhibit was submitted August 1, 1974 and received in evidence as Exhibit 1. Defendants were allowed to file exhibits explaining reasons for any undue delays. Exhibits were filed by defendants Sterling Transit Co., Inc. and Associated Freight Lines on August 30, 1974, and were received in evidence as Exhibits 5 and 6, respectively.

Exhibit 1 discloses that subsequent to the prehearing conference Eagle Truck Lines, Inc. satisfied the overcharge claims and paid the 7 percent interest, and Victory Transportation Service, Inc. satisfied the overcharge claims but did not pay the 7 percent interest.

As to overcharge claims that were not satisfied, public hearing was held before Examiner O'Leary at San Francisco on August 21, 1974. At the hearing complainant made a motion that the complaint be dismissed as to defendants Fossi Freight Lines, Inc. and Eagle Truck Lines, Inc. The motion was taken under submission. Evidence presented by complainant (Exhibit 2) discloses that on May 3, 1971 defendant Beckman Express & Warehouse (Beckman) transported three shipments for Roll Rite Corp., Oakland, pursuant to its authority as a highway common carrier. The commodity transported is described as garment trucks. Complainant's witness and Beckman's witness both testified that the garment trucks are specially made hand trucks which are utilized for the movement of garments on hangers. Complainant alleges that the garment trucks are properly classified Class 100 pursuant to Item 188560 (Sub 1) of National Motor Freight Classification A-11 (NMFC A-11). Beckman denied the claim on the basis that a rating of Class 200 is proper pursuant to Item 189140 (Sub 3) of NMFC A-11. The witness for Beckman also put forth Item 164490 (Sub 2) of NMFC A-11 and Item 188880 of NMFC A-11 as possible alternative items to be utilized for the commodity in question. Articles described in Items 164490 and 188880 are classified Class 200 and 150, respectively.

The articles described in the items referred to by complainant and Beckman are as follows:

Item

- 188560 Barrows, Trucks, or Wagons, NOI, hand with fixed bodies or
Sub 1 with platforms and standing ends, sides, stakes, or standards.
- 189140 Freight Carts, Trucks, Trailers, or Wagons, horse-drawn or
Sub 3 trailer, NOI, with or without bodies or springs, wheels on or
off, detachable shafts, poles, or tongues detached set up or
other than completely knocked down, height of each vehicle as
tendered for shipment, loose or in packages exceeding 44 inches.
- 164490 Store display racks or stands, NOI:
Sub 2 SU loose.
- 188880 Carts, hand, NOI:
Sub 1 SU wheels on or off.

The garment trucks are properly classified Class 100 pursuant to Item 188560 (Sub 1) of NMFC A-11 as alleged by complainant. The evidence shows that Beckman assessed charges totaling \$124.97 for the shipments, whereas the charges should have been \$64.82 resulting in overcharges totaling \$60.15.

Complainant also presented evidence that defendant East Bay Drayage & Warehouse Co. (East Bay) transported three shipments of Zeothix from Pacific Coast Chemicals, Berkeley, to Flecto, Oakland, during the first three months of 1972. Zeothix is a specially processed silica pigment used in paints and lacquers. Complainant alleges that the commodity is properly classified Class 55, 1tl, pursuant to Item 150190 of NMFC A-11. No one appeared at the hearing for East Bay. The commodity is properly classified Class 55, 1tl, as alleged by complainant. East Bay assessed charges totaling \$108.42 for the three shipments, whereas the charges should have been \$61.56 resulting in overcharges totaling \$46.86.

We need not concern ourselves with the details concerning the overcharge claims filed against the other defendants since the claims have been satisfied in some instances plus interest and in some instances without interest.

The next issue to be discussed is whether or not defendants should pay 7 percent interest per annum as part of the settlement. Section 734 of the Public Utilities Code provides in part that:

"When complaint has been made to the commission concerning any rate for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from such reparation."

Under Section 734 the Commission clearly has the power to authorize interest herein if it determines that no discrimination will result. No discrimination will result from an order requiring the payment of interest and it will be so ordered. The Commission has traditionally applied the interest rate set forth in the California Constitution in connection with the award of reparations. (Folger Athearn, Jr. v Paxton Trucking Co. (1971) 71 CPUC 816.) The present rate (7%) coincides with the rate sought herein by complainant. (California Constitution Art. XX, Sec. 22 (interest rates).)

We now turn to that portion of the complaint wherein complainant requests that a fine be imposed on each defendant pursuant to Section 2107 of the Public Utilities Code for each overcharge found not to be refunded within a reasonable period of time. Section 2107 of the Public Utilities Code provides:

"Any public utility which violates or fails to comply with any provision of the Constitution of this State or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for each offense."

None of the defendants have heretofore been directed by the Commission to refund the overcharges in question by order of the Commission, nor has the Commission established by General Order or otherwise any regulations for the processing of overcharge claims other than the statute of limitations set forth in Section 737 of the Public Utilities Code. It is therefore not necessary to make any findings with respect to whether or not refunds were made within a reasonable time as no fine could be imposed pursuant to Section 2107 of the Public Utilities Code on the basis set forth by complainant.

With respect to complainant's request that the Commission establish specific requirements concerning the disposition of overcharge claims, this is not a proper proceeding to establish such requirements. Such requirements should only be established in a proceeding wherein all common carriers are given notice and an opportunity to participate therein.

Findings

1. Defendants Associated Freight Lines; A-1 Express Delivery Service; Complete Trucking Service; Sterling Transit Co., Inc.; and Eagle Truck Lines, Inc. have satisfied the overcharge claims and paid interest at the rate of 7 percent per annum thereon.

2. Defendants Alltrans Express California, Inc; Crescent Truck Lines; Doudell Trucking Company; Haslett Trucking; Mission Cities Freight Lines; System 99; Golden West Freight Lines; Hills Transportation Co.; and Victory Transportation Service, Inc. have satisfied the overcharge claims but have not paid any interest thereon.

3. The garment trucks transported by Beckman are properly classified Class 100 pursuant to Item 188560 (Sub 1) of NMFC A-11.

4. Defendant Beckman charged \$60.15 more than it should have on the three shipments of garment trucks.

5. Zeothix is a specially processed silica pigment used in paints and lacquers.

6. Zeothix in 1tl quantities is properly classified Class 55 pursuant to Item 150190 of NMFC A-11.

7. Defendant East Bay charged \$46.86 more than it should have on the three shipments of Zeothix.

8. No evidence was presented with respect to overcharge claims against defendant Rossi Freight Lines, Inc.

9. The award of interest at the rate of 7 percent per annum from the date of the payment of the freight bill to the date of refund of the overcharge will not result in discrimination.

Conclusions

1. The motion to dismiss the complaint as to defendant Rossi Freight Lines, Inc. should be granted.

2. The motion to dismiss the complaint as to defendant Eagle Truck Lines, Inc. should be granted.

3. Defendants Alltrans Express California, Inc.; Crescent Truck Lines; Doudell Trucking Company; Haslett Trucking; Mission Cities Freight Lines; System 99; Golden West Freight Lines; Hills Transportation Co.; and Victory Transportation Service, Inc. should be ordered to pay interest on the total amount of overcharges previously refunded computed at the rate of 7 percent per annum from the date the freight bills were paid to the date of the refund of overcharges to the shippers represented by complainant.

4. Defendant Beckman should be ordered to pay the shipper represented by complainant \$60.15 plus interest at the rate of 7 percent per annum computed from the date of payment of the freight bills.

5. Defendant East Bay should be ordered to pay the shipper represented by complainant \$46.86 plus interest at the rate of 7 percent per annum computed from the date of payment of the freight bills.

6. In all other respects the relief sought by the complaint should be denied.

O R D E R

IT IS ORDERED that:

1. The motion to dismiss the complaint as to defendant Rossi Freight Lines, Inc. is granted.

2. The motion to dismiss the complaint as to defendant Eagle Truck Lines, Inc. is granted.

3. Within thirty days after the effective date of this order, defendants Alltrans Express California, Inc.; Crescent Truck Lines; Doudell Trucking Company; Haslett Trucking; Mission Cities Freight Lines; System 99; Golden West Freight Lines; Hills Transportation Co.; and Victory Transportation Service, Inc. shall pay interest on the total amount of overcharges previously refunded computed at the rate of 7 percent per annum from the date the freight bills were paid to the date of the refund of overcharges to the shippers represented by complainant.

4. Within thirty days after the effective date of this order, defendant Beckman Express & Warehouse shall pay to the shipper represented by complainant \$60.15 plus interest at the rate of 7 percent per annum computed from the date of payment of the freight bills.

5. Within thirty days after the effective date of this order, defendant East Bay Drayage & Warehouse Co. shall pay to the shipper represented by complainant \$46.86 plus interest at the rate of 7 percent per annum computed from the date of payment of the freight bills.

6. In all other respects the relief sought by the complaint is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of NOVEMBER, 1974.

Vermon L. Shuman
President
William Synovis, Jr.

Robert E. Mylound
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

LIST OF APPEARANCES

Prehearing Conference

Complainant: Folger Athearn, Jr., for himself.

Defendants: Handler, Baker and Greene, by Ray Greene, Attorney at Law, and Ron Davis, for Associated Freight Lines; Ray V. Mitchell and Richard McIntosh, for System 99; Tom Tuite, for Alltrans Express California, Inc.; Henry C. Ruthnick, for Beckman Express & Warehouse; Norman Crisp, for Crescent Truck Lines; Richard D. Stokes, for Haslett Trucking; Alwyn A. McCracken, for Mission Cities Freight Lines; Arthur D. Brush and H. P. Connors, for Eagle Truck Lines, Inc.; C. Alan Worth, for Complete Trucking Service; and Robert B. Young, for Sterling Transit Co., Inc.

Hearing

Complainant: Folger Athearn, Jr., for himself.

Defendant: Henry C. Ruthnick, for Beckman Express & Warehouse.

Interested Party: Arthur D. Maruna and H. Hughes, for California Trucking Association.