

Decision No. 84144**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of WILLIAM F. MINTON,
dba MINTON FARM SERVICE & SUPPLIES,
for reinstatement of Highway Contract
Carrier and Dump Truck Permits.

Application No. 55109
(Filed August 12, 1974)

Robert C. Lenhard, Attorney at Law,
for applicant.
T. H. Peceimer, for the Commission
staff.

O P I N I O N

By this application, William F. Minton, doing business as Minton Farm Service and Supplies, requests reinstatement of highway contract carrier and dump truck carrier permits which had been issued to him and were subsequently revoked on June 11, 1971.

Public hearing was held before Examiner Mooney in Marysville on September 11, 1974, on which date the matter was submitted.

Section 3737 of the Public Utilities Code was amended by Assembly Bill 1855 effective November 23, 1970 to require carriers to purchase needed tariffs and supplements thereto and pay annual charges therefor. Prior to the amendment, there was no charge for this service. On October 23, 1970, the Commission staff sent a letter to applicant explaining Assembly Bill 1855 together with an invoice for \$45.37 for the first year subscription for Minimum Rate Tariffs 1-B, 2, 7, 8, 14-A, and 17, Distance Table 7, Directory 1, and Exception Ratings Tariff 1 which he had been receiving.

No payment was made by applicant. On February 18, 1971, a second notice was sent to him informing him that his permits would be suspended and subsequently revoked if payment were not received. No response was received from applicant. On April 27, 1971, a copy of Commission Resolution No. 16712 was mailed to applicant by certified mail with a return receipt which was signed by him on April 29, 1971. The resolution ordered that applicant's permits be suspended effective May 11, 1971 and revoked June 11, 1971 unless appropriate remittance was made for the aforementioned tariffs or a request for amendment of his permits was received to eliminate the requirement to purchase tariffs not being used. Again no response was received from applicant, and within several days after the effective date of the revocation, a letter was sent to applicant confirming it.

On September 30, 1970, applicant requested additional copies of Minimum Rate Tariffs 8 and 14-A and paid for them although the revision of Section 3737 had not become effective at that time. Payment was accepted by the Commission staff, and he was placed on the subscription list for these additional tariffs and continues to receive all revisions to them. He no longer receives revisions to the tariffs listed in the aforementioned invoice, including the copies of Minimum Rate Tariffs 8 and 14-A listed therein. The last quarterly report filed by applicant was for the second quarter of 1971.

Applicant testified as follows: When he initially commenced hauling, he transported grain. He later expanded his operations to include the transportation of aggregates, tomatoes, and fertilizer. All of his bookkeeping and office work was handled by his mother-in-law at her home until her death in January 1971. He did not realize he had received additional copies of any tariffs and does not recall having received an invoice for tariffs in

October 1970. All bills were given to his mother-in-law. She wrote the checks, and he merely signed them. After her death, his wife took over the office work, and the records were transferred to his home. His wife had no experience in this type of work. Prior to June 11, 1971, he received correspondence from the Commission that his permits might be suspended or revoked if he did not pay for tariffs, and his wife informed him that the bill was paid. Checks for \$46.32, \$10.13, and \$23.66 dated November 14, 1970, January 5, 1971, and August 14, 1971, respectively, had been sent to the Commission. Although he did not know what particular bills were paid by the checks, it was his understanding that they fully paid all outstanding amounts owed to the Commission. He recalls having received a telephone call from a Commission representative around June 2, 1971 regarding quarterly reports but does not recall any conversation at the time regarding the invoice in issue as alleged by the staff. In latter 1972, he applied to the Sentry Insurance Company for liability insurance. When the certificate of insurance was filed with the Commission, he was informed by the Commission and the insurance company that his permits had been revoked. He was not performing any transportation subject to Commission regulation at the time, but he did check with someone at the Commission regarding this and was informed that everything appeared to be in order. He has no recollection of having received any other notice from the Commission subsequent to June 11, 1971 that his permits were in fact revoked. Since latter 1972, he has been hauling aggregate, which is subject to Commission regulation, as a subhauler. He was not aware that subhaulers are required to file quarterly reports, and for this reason, he has not filed any for this transportation. It was not until the overlying carrier for whom he was hauling in 1974 checked with the Commission to see if he had the required operating authority that he became aware

that there was any problem with his authority. He thereupon checked again with the Commission staff and was informed that his permits had been revoked. He then filed the instant application. He was never aware that he had violated any rules or regulations and certainly would never have intentionally failed to pay the \$45.37 invoice, particularly if he knew it would jeopardize his operating licenses.

The staff representative explained that subhaulers are required to file quarterly reports and pay a minimum fee even though the revenue is included in the overlying carrier's report. He asserted that none of the three checks referred to by applicant were in payment of the \$45.37 invoice and that they most likely were in payment of quarterly fees. The representative argued that ample time and notice had been given to applicant regarding the bill for the tariffs and the possible suspension and revocation. He recommended that the application be denied.

Findings

1. Applicant's highway contract carrier and dump truck carrier permits were revoked effective June 11, 1971 for failure to comply with Section 3737 of the Public Utilities Code by not paying a renewal fee of \$45.37 for Minimum Rate Tariffs 1-B, 2, 7, 8, 14-A, and 17, Distance Table 7, Directory 1, and Exception Ratings Tariff 1.

2. All of applicant's bookkeeping and office work was handled by his mother-in-law until her death in January 1971 at which time his wife, who had no experience in such matters, took over these duties.

3. Applicant's wife had informed him prior to June 11, 1971 that the invoice for the \$45.37 had been paid. Payments had been made to the Commission for other purposes, and the invoice in issue had not in fact been paid.

4. Other than a notice in connection with a certificate of insurance in latter 1972, applicant has no recollection of having received any notice from the Commission that the possible revocation of his permits referred to in Resolution No. 16712 became effective, and it is his recollection that upon checking with someone at the Commission regarding the aforementioned notice, he was informed that everything appeared to be in order.

5. It was not until 1974 that applicant became aware that the possible revocation of his permits referred to in Resolution No. 16712 became effective. He thereupon filed the instant application.

6. Applicant has not filed a quarterly report with the Commission or paid the required fees in connection therewith for the first quarter of 1971. He did file the report and pay the fees for the second quarter of 1971, but has filed no reports and paid no fees subsequent thereto. Applicant was of the erroneous opinion that since he was performing transportation not subject to regulation or subhaul transportation during these periods, he did not have to file such reports.

7. Applicant's permits should be reinstated after all required reports have been filed and all fees or payments due the Commission have been paid.

Conclusions

1. The application should be granted subject to the conditions set forth in the order which follows.

2. Applicant should be directed to cease and desist from failing to timely file any and all reports required by the Commission and from failing to remit all payments and fees to the Commission within the time specified.

Applicant is placed on notice that any delinquency on his part in complying with Commission rules and regulations, including those requiring the filing of reports and the payment of invoices and fees, may result in Commission action leading to revocation of his permits.

O R D E R

IT IS ORDERED that:

1. The highway contract carrier and dump truck carrier permits issued to William F. Minton, doing business as Minton Farm Service and Supplies, and revoked by Commission Resolution No. 16712 dated June 11, 1971 will be reinstated as of the date all payments due the Commission for tariffs and supplements have been paid and all obligations pending, including the filing of delinquent quarterly reports and the payment of delinquent fees in connection therewith, have been satisfied.
2. Applicant shall cease and desist from failing to timely file any and all reports required by the Commission and from failing to remit all payments and fees to the Commission within the required time.

3. In the event the conditions specified in Ordering Paragraph 1 are not complied with within sixty days after the effective date of this order, this order shall stand vacated.

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

Dated at San Francisco, California, this 4th
day of MARCH, 1975.

Vernon L. Stinson
President

William J. Brown

~~William J. Brown~~

Leonard Ross
Commissioners