

ORIGINALDecision No. 84262

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 James A.) Case No. 9515
 Ortloff, an individual doing business) (Filed February 23, 1973)
 as EAGER BEAVER TRUCKING.)

In the Matter of the Application of)
 JAMES A. ORTLOFF, an individual doing)
 business as EAGER BEAVER TRUCKING, for)
 authority to depart from the minimum) Application No. 54098
 rates, rules and regulations of Minimum) (Filed June 8, 1973)
 Rate Tariff No. 2, pursuant to the)
 provisions of Section 3616 of the)
 Public Utilities Code.)

ORDER DENYING REHEARING AND
CLARIFYING DECISION NO. 83972

On January 7, 1975, we issued Decision No. 83972 in Case No. 9515 and Application No. 54098. By this decision we found that James A. Ortloff doing business as Eager Beaver Trucking (EBT) violated Sections 3667 and 3737 of the Public Utilities Code by failing to collect charges for transportation furnished within the maximum time specified in Item 250 of Minimum Rate Tariff 2, commonly referred to as the credit rule. We further denied EBT's application to depart from the credit rule under authority of Section 3666 of the Public Utilities Code by extending credit for 30 rather than 7 days after billing to 10 named shippers.

On January 27, 1975, EBT filed a petition for rehearing and/or reconsideration of Decision No. 83972. ^{1/} Petitioner cites three

1/ On February 27, 1975 EBT filed an amendment to its petition for rehearing and/or reconsideration of Decision No. 83972.

allegations of error in its petition. Petitioner contends that the Commission erred in finding the carrier liable for the shippers' failure to pay freight charges which are due the carrier within the 7-day credit period. The petitioner further contends that the fine levied upon the petitioner in Decision No. 83972 was arbitrary and capricious as was the denial of petitioner's application for a deviation from Item 250 of Minimum Rate Tariff 2.

The latter two allegations of error are without merit. Both the \$2,000 fine levied in Decision No. 83972 and the denial of petitioner's deviation application are within the discretion of the Commission and we find no abuse of that discretion.

The initial allegation of error requires us to clarify our basis for finding a violation of the credit rule in Decision No. 83972. The petitioner argues that a motor carrier cannot be held liable under the Public Utilities Code and subject to a punitive fine if shippers fail to pay freight charges which are due the carrier within the 7-day credit period prescribed in the credit rule.

We concur in this evaluation as it refers to a strict liability theory of guilt. We do not believe that the provisions of the credit rule contemplate a violation of said rule where a carrier issues credit for only 7 days and has no knowledge that the shipper may violate the rule and in fact makes every effort to collect the charges within 7 days.

We therefore conclude that it was error to consider a strict liability theory as a standard of guilt in the subject decision. However, the evidence of record still sustains the finding of fact and conclusions of law in Decision No. 83972. The evidence shows that many of the credit delinquencies involved the same shippers over a long period of time. In fact, petitioner extended credit to shippers who were at the time delinquent in their payment of freight charges. This is the second citation of the petitioner for violation of the credit rule in a relatively

short period of time. These facts establish knowledge on the part of the petitioner that the credit rule would be violated as well as acquiescence in the violation by the shippers.

This Commission has consistently held that a carrier violates the credit rule when it extends credit to a shipper that has not paid previous bills on time and is again late. ^{2/} This reasoning has been sustained in judicial review by the federal courts of similar credit rules in federal statutes. ^{3/}

^{2/} Decision No. 83086, in Case No. 9522 (Inv. of Bellnomini).

^{3/} U.S. v. Infinger Transportation Co., 316 F. Supp. 124 (1970);
U.S. v. The Pennsylvania Railroad Co., 308 F. Supp. 293 (1968).
In this decision the court stated: "... paragraph 4 of Count 1 sets forth a course of conduct to show the frequency of the offenses and the failure of the carrier to take effective precautions as required by the Commission's credit order . . . These records also show that at the very time credit was extended on each of the three occasions specified in the Complaint, the two shippers in question were delinquent in payment of other credit charges. These facts taken together are sufficient to establish that the defendant's failure to obey the order of the Commission was done knowingly."

IT IS ORDERED THAT:

Rehearing of Decision No. 83972 is hereby denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 25th day
of MARCH, 1975.

I obtain
William Synowski.

Vernon L. Stegman
President

[Signature]

[Signature]
Commissioners