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Decision No. 84269

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PASCOE STEEL  
CORPORATION for Ex Parte Relief  
From Minimum Rate Tariff #15.

Application No. 55306  
(Filed November 12, 1974)

O P I N I O N

Pascoe Steel Corporation (Pascoe) is engaged in the fabrication and sale of prefabricated metal structures. Pascoe has, from time to time, contracted with highway permit carriers for the purpose of transporting its products from its factory to various points of destination. On or about August 1, 1973 Pascoe entered into a written agreement with Brothers Transportation Inc. (Brothers), a highway permit carrier, for a three-axle diesel tractor and a forty-foot flatbed trailer under the yearly rates named in Minimum Rate Tariff 15 (MRT 15).

On May 31, 1974, Pascoe experienced a work stoppage at its Pomona plant due to a strike by the International Association of Bridge, Structural, and Ornamental Iron Workers employed by Pascoe. The strike was settled on August 9, 1974, permitting resumption of Pascoe's operations on August 12, 1974.

On May 31, 1974 Pascoe delivered the tractor and trailer covered by the MRT 15 agreement to Brothers, where they remained until August 12, 1974, at which time they were returned to Pascoe. Brothers submitted bills to Pascoe on July 3, August 2, and September 6, 1974 for \$2,179.44, \$2,335.28, and \$2,648.40, respectively, and which were paid through Transport Clearings on July 25, August 29, and October 10, respectively.

By this application Pascoe seeks an order granting relief from MRT 15 in the form of a refund from Brothers in the sum of \$5,381.47. According to the verified application, Brothers is aware of the facts set forth in the application, acknowledges payment of all amounts alleged to have been paid by Pascoe, and has executed this application as evidence of the fact that it does not object to the relief requested by Pascoe. The refund requested by Pascoe consists of the full amount paid for the months of June and July, to which 12/31 of the base vehicle unit rate (\$866.71) covering the August service was added.

MRT 15 does not provide for the waiver or remission of all or part of the yearly or monthly vehicle unit rates published therein when the service to be performed under the required written agreement has been interrupted or prematurely terminated by either the shipper or carrier. In Decision No. 67659<sup>1/</sup> the Commission considered the publication of a rule in MRT 15 to govern the apportionment of charges for services which have been terminated. In declining to publish such a tariff rule, the Commission stated, in part, as follows:

"...the need for a rule to govern such situations is speculative. The record shows that none of the rules proposed...would meet all of the possible circumstances under which service could be interrupted or terminated... In the circumstances where an inequitable situation may result from interruption or termination of a written agreement beyond the control of the parties to the agreement, relief from the tariff provisions may be sought from the Commission through the filing of formal pleadings appropriate to the circumstances."

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<sup>1/</sup> Re Minimum Rate Tariff 15 (1964) 63 CPUC 205.

The interruption of operations experienced by Pascoe resulting in the return of the transportation equipment to Brothers was unquestionably beyond the control of either party. The Commission has granted relief in a number of instances, involving inequitable situations as contemplated by Decision No. 67659.<sup>2/</sup>

The circumstances in this matter are similar to those involved in Case No. 8661.<sup>3/</sup> The notable difference was that in the former case the equipment remained on the shipper's premises, while in the instant matter the equipment was in the possession of the carrier for the duration of the strike. No information is at hand indicating whether the carrier made use of the equipment while it was in its custody.

Pascoe herein requests remission of the charge paid during the strike period. Such charge was the yearly base vehicle unit rate applicable to services rendered under a yearly agreement. The return of the equipment to the carrier does not, per se, constitute justification for the return of the full amount paid by Pascoe during the strike period. The strike resulted in an unintentional abrogation of the agreement; consequently, the basis to properly determine an adjustment of charges would be to compute the monthly base vehicle unit rate from August 1, 1973 through August 31, 1974. The difference between the charges so determined and the charges paid for the same period must then be deducted from the amount computed on the monthly basis for the period during the strike. This would constitute the maximum permissible refund. Table 1 below sets forth the detail of these calculations.

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<sup>2/</sup> See Decision No. 73606 (1968) 67 CPUC 770, Decision No. 77655 (1970) 71 CPUC 380, and Decision No. 80254 (1972) 73 CPUC 663.

<sup>3/</sup> Decision No. 73606, supra.

TABLE 1

	<u>Rates</u>		<u>Charges</u>	
	<u>Yearly</u>	<u>Monthly</u>	<u>Yearly</u>	<u>Monthly</u>
August 1, 1973- December 31, 1973	\$2,000	\$2,194 (5 months)	\$10,000.00	\$10,970.00
January 1, 1974- February 10, 1974	2,116	2,317 (1-10/30 months)	2,821.33	3,069.33
February 11, 1974- May 31, 1974	2,116 + 3%	2,317 + 3% (3-20/30 months)	7,991.42	8,750.53
June 1, 1974- June 30, 1974	2,116 + 3%	2,317 + 3% (1 month)	2,179.48	2,386.51
July 1, 1974- July 12, 1974	2,239	2,445 (12/30 months)	895.56	978.00
July 13, 1974- August 11, 1974	2,239 + 1%	2,445 + 1% (1 month)	2,261.39	2,469.45
August 12, 1974- August 31, 1974	2,239 + 1%	2,445 + 1% (20/30 months)	1,507.58	1,646.30
Totals			\$27,656.76	\$30,290.12
Difference				\$2,633.36
June 1 - August 11, 1974 @ monthly rates			\$5,833.96	
Less balance due @ monthly rates for entire period				2,633.36
Amount Refundable				\$3,200.60

Pascoe is not a highway carrier or public utility. Brothers is a highway permit carrier and as such is subject to the Commission's jurisdiction. The Commission recognizes Brothers as a co-applicant by virtue of the signature on page 4 of the application. The Commission will authorize Brothers to make the refund hereinafter found justified.

Findings

1. Brothers provided Pascoe with a three-axle diesel tractor and a forty-foot flatbed trailer under the terms of an agreement dated August 1, 1973, subject to the provisions of MRT 15. That agreement specified a period to commence August 1, 1973 and end August 1, 1974.

2. The Pomona plant of Pascoe experienced a work stoppage from May 31, 1974 to August 9, 1974 due to a strike by the Shopmens Local Union 509 of the International Association of Bridge, Structural, and Ornamental Iron Workers.

3. The transportation equipment described in Finding 1 was delivered to Brothers on May 31, 1974 and returned to Pascoe on August 12, 1974.

4. Pascoe paid \$5,381.47 to Brothers, which was based on the base yearly vehicle unit rates named in MRT 15, and covered the period when the equipment under agreement was not in the possession or under the control of Pascoe.

5. The interruption of service experienced by Pascoe requires that the charges for the yearly base vehicle unit rate be recomputed at the monthly base vehicle unit rates from August 1, 1973 through August 31, 1974.

6. A refund of \$3,200.60 by Brothers to Pascoe is justified.

The Commission concludes that Brothers should be authorized to refund \$3,200.60 to Pascoe for nonperformance of services during the period beginning June 1, 1974 and ending August 11, 1974. In all other respects the Commission concludes that Application No. 55306 should be denied. A public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. Brothers Transportation Inc. is authorized to remit to Pascoe Steel Corporation \$3,200.60.

2. In all other respects Application No. 55306 is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 1st day of APRIL, 1975.

Vernon P. Johnson  
President  
William J. Johnson  
Leonard Ross  
Commissioners

Commissioner ROBERT BATINOVICH

Present but not participating.