

Decision No. 84323**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of Russell Truck Company, a California Corporation, for authority to depart from the terms of the contract entered into pursuant to Item No. 210 and Item No. 300 of Cal. P.U.C. Minimum Rate Tariff 15.

Application No. 55443  
(Filed January 17, 1975)

### O P I N I O N

Minimum Rate Tariff 15 (MRT 15) names yearly, monthly, and weekly vehicle unit rates for the transportation of property by highway carriers. The vehicle unit rates set forth therein apply when the shipper enters into a written agreement with the carrier.

Russell Truck Company (Russell) operates as a radial highway common carrier and highway contract carrier pursuant to permits issued by this Commission. Russell also conducts operations as a highway common carrier pursuant to a certificate of public convenience and necessity granted by Decision No. 35274. Russell has performed transportation for Lever Brothers Company (Lever) under the provisions of MRT 15 since 1969. During the month of March 1974 written agreements were in effect between Russell and Lever for the use of three units of Russell's motor vehicle equipment with drivers pursuant to the provisions of MRT 15.

During March 1974 there was a labor strike at the facilities of Lever. Although Lever's plant was in operation Russell's drivers had to observe the picket lines and therefore could not operate the three vehicles covered by the written agreements between Russell and Lever. Under the terms of the written agreements Lever compensates Russell on the basis of the monthly and yearly vehicle unit rates set forth in MRT 15 even though transportation services were not performed during the period of the strike.

Russell here seeks authority to refund to Lever the amount of labor costs Russell did not incur by reason of its drivers inability to perform services because of the strike.

Exhibits A and B attached to the application set forth costs per hour that were not incurred during March 1974. Exhibits C and D attached to the application show that for the three units of equipment Russell did not incur the hourly costs for 84 hours based upon a 168 hour month for each unit of equipment and that the total cost not incurred amounts to \$1,907.23.

MRT 15 does not provide for the waiver of remission of all or part of the yearly, monthly, or weekly 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 dated August 4, 1964 in Case No. 7783, Petition for Modification No. 1 (Unreported) the Commission considered the publication of a rule in MRT 15 to govern the apportionment of charges for services which have been interrupted or 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."

The instant application involves an interruption of a written agreement for service due to a work stoppage caused by a strike.

The Commission's Transportation Division staff advises that discussions with Russell and Lever revealed that none of the transportation services covered by the written agreements were under Russell's highway common carrier certificate.

Findings

1. Russell, operating as a permitted carrier, has contracted with Lever for the transportation of property under the vehicle unit rate provisions of MRT 15. Such contracts were in effect for the month of March 1974.

2. During March 1974 there was a labor strike at the facilities of Lever and Russell's drivers were not able to perform service because they had to observe the picket lines.

3. Lever paid Russell on the basis of the monthly and yearly rates set forth in MRT 15.

4. To the extent Russell would retain that portion of the compensation it received from Lever covering labor costs that were not incurred there would result an inequitable situation within the meaning of Decision No. 67659.

5. Russell should be authorized under Section 3667 of the Public Utilities Code, to remit to Lever the amount of labor costs not incurred because of the strike in March 1974. That amount is \$1,907.23.

6. A public hearing is not necessary.

The Commission concludes that Application No. 55443 should be granted.

O R D E R

IT IS ORDERED that:

1. Russell Truck Company is authorized to remit to Lever Brothers Company the sum, of \$1907.23..

2. The authority herein granted shall expire unless exercised within ninety days after the effective date of this order.

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

Dated at San Francisco, California, this 15th  
day of APRIL, 1975.

Vernon L. Stevenson  
President  
William J. ...  
...  
Leonard ...  
Robert ...  
Commissioners