

Decision No. 84453**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of John T. Reed,)
 President of Pacific Coast)
 Tariff Bureau, for and on Be-)
 half of ACME DRAYAGE, By virtue)
 of Power of Attorney to said)
 Pacific Coast Tariff Bureau, to)
 Depart from the terms of the)
 contract entered into pursuant)
 to Item No. 90 of Pacific Coast)
 Tariff Bureau Tariff No. 101,)
 Cal. P.U.C. No. 36 as described)
 herein.)

Application No. 55043
 (Filed July 17, 1974)

OPINION AND ORDER

By this application, Pacific Coast Tariff Bureau (PCTB), on behalf of Acme Drayage (Acme), requests that Acme be granted authority to depart from the provisions of PCTB Local Freight Tariff No. 101, Cal. P.U.C. No. 36 (Tariff No. 101), by refunding to Federal Envelope Company (Federal) amounts paid for services not performed by Acme during a strike period.

According to applicant, Acme entered into a written agreement with Federal on May 1, 1973, for the use of an 18-foot, 2-axle van with driver under the yearly vehicle unit rates in Item 100 of Tariff No. 101. Continuous service was furnished by Acme to Federal up to and including June 11, 1974. On June 12, 1974, Federal ceased normal operations as its employees went on strike and it was precluded from utilizing the vehicle under contract from Acme. Applicant informed the Commission by letters that Acme was able to use its equipment previously dedicated to Federal in other revenue service during the entire period from June 17, 1974 to July 28, 1974, inclusive, and that Acme resumed operations at Federal on July 29, 1974.

Applicant declares that Tariff No. 101 is predicated on the provisions of Minimum Rate Tariff 15 and does not allow for cessation of charges during a strike situation. Applicant alleges that, in Decision No. 67659 dated August 4, 1964, in Case No. 7783 (Petition for Modification No. 1), the Commission considered the publication of a rule in Minimum Rate Tariff 15 to govern the apportionment of charges for services that had been terminated. In refusing to publish such a rule, the Commission said:

"...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."

Applicant states that Acme and Federal wish to waive the assessment of charges during the strike period as such assessment of charges has unreasonably burdened Federal and resulted generally in the double assessment of charges for the same piece of equipment by Acme. Applicant contends that, prior to the interruption of service, Federal notified Acme of the possibility of a strike by its employees and such advance notice enabled Acme to plan for alternate utilization of its equipment resulting in a loss of vehicle utilization time only from June 12 through June 16, 1974.

Applicant avers that Acme billed and Federal paid the following charges:

June, 1974 Base Rate	\$1,910.00
Mileage 800 miles @13.5¢	108.00
	<hr/>
3% Surcharge	\$2,018.00
	60.54
	<hr/>
	\$2,078.54
 July, 1974 Base Rate	 \$2,043.00
3% Surcharge	61.29
	<hr/>
	\$2,104.29

Table 1 below sets forth the detail of the calculations involved in determining the applicable tariff charges and permissible refund.

Table 1

Applicable Charges
In Tariff No. 101
For June, 1974

Base Rate	\$1,910.00	
(1) Mileage Charge	108.00	
	<u>2,018.00</u>	
3% Surcharge	60.54	
Total Charges - June, 1974		\$2,078.54

Charges Due Acme for Services
Performed in June of 1974:

(2) June 1, 1974 - June 11, 1974	\$ 655.76	
(3) June 12, 1974 - June 16, 1974	111.90	
(4) Mileage Charge	<u>111.24</u>	
Total Charges - June, 1974		878.90
Amount Refundable - June, 1974		<u>\$1,199.64</u>

Applicable Charges
In Tariff 101
For July, 1974

Base Rate	\$2,043.00	
(5) 1% Surcharge	<u>12.65</u>	
Total Charges - July, 1974		\$2,055.65

Charges Due Acme for Services
Performed in July of 1974:

(6) July 29, 1974 - July 31, 1974	\$291.87	
1% Surcharge	<u>2.92</u>	
Total Charges - July, 1974		294.79
Amount Refundable - July, 1974		<u>\$1,760.86</u>

Amount Refundable:

June, 1974	\$1,199.64	
July, 1974	<u>1,760.86</u>	
Total Amount Refundable		\$2,960.50

Charges Assessed by Acme for
Services Performed in July
of 1974:

Base Rate	\$2,043.00	
3% Surcharge	<u>61.29</u>	
Total Charges - July, 1974		\$2,104.29

Applicable Charges in Tariff
No. 101 for July, 1974:

Base Rate	\$2,043.00	
(5) 1% Surcharge	<u>12.65</u>	
Total Charges - July, 1974		\$2,055.65
Amount of Overcharge		<u>\$48.64</u>

- (1) 800 miles at 13.5 cents per mile.
- (2) 7 days at prorated charge of \$93.68 per day based on a 21-day month (\$1,910.00 plus 3% surcharge of \$57.30 or \$1,967.30 divided by 21).
- (3) 3 days in which equipment without driver was furnished at \$37.30 per day, the prorated charge of \$93.68 per day minus \$56.38 per day. The deduction of \$56.38 per day is based on an 8-hour day at \$7.047 per hour (the base labor rate of \$6.620 per hour plus Workmen's Compensation Insurance of \$0.427 per hour).
- (4) 800 miles at 13.5 cents per mile plus 3% surcharge.
- (5) 1% of \$1,264.77 the charge for 13 days at \$97.29 per day based on a 21-day month (\$2,043.00 divided by 21). The surcharge applied from July 15 to July 31, 1974, inclusive.
- (6) 3 days at prorated charge of \$97.29 per day based on a 21-day month (\$2,043.00 divided by 21).

In consideration of the specific circumstances involved in this application, the Commission finds that:

1. Acme entered into a written agreement with Federal on May 1, 1973, for the transportation of property in an 18-foot, 2-axle van, under the yearly vehicle unit rate provisions of Tariff No. 101 and performed services continuously thereunder up to and including June 11, 1974. The agreement for service involved herein is for the period of June 1, 1974, to and including July 31, 1974.

2. Federal experienced work stoppage of its employees during the period from June 12, 1974, to and including July 24, 1974.

3. Federal notified Acme prior to the interruption of service of the possibility of the strike by its employees and Acme was able to plan for alternate utilization of the equipment and driver for the period of June 17 through July 28, 1974 with only 3 days of non-revenue service from June 12 through June 14, 1974.

4. Acme did not employ a driver to serve Federal during the 3-day period in which the carrier's equipment was idle and assessment of the charges for the direct labor related cost elements described in Table 1 for such period would result in an inequitable situation under the meaning of Decision No. 67659.

5. Acme did not dedicate the involved equipment to Federal but utilized it in other revenue service during the entire period from June 17 to July 28, 1974, inclusive, and assessment of charges for such period would result in an inequitable situation under the meaning of Decision No. 67659.

6. A refund of \$2,960.50 by Acme to Federal is justified.

7. Acme is in violation of the provisions of Section 494 of the Public Utilities Code to the extent that it assessed charges for the involved transportation for July of 1974 which exceeded the applicable charges in Tariff No. 101 by \$48.64 and should be directed to remit this amount to Federal.

The Commission concludes that Application No. 55043 should be granted to the extent indicated in the ensuing order. A public hearing is not necessary.

IT IS ORDERED that:

1. Pacific Coast Tariff Bureau is authorized to have Acme Drayage Company depart from the provisions of its Local Freight Tariff No. 101, Cal.P.U.C. No. 36, by remitting to Federal Envelope Company a sum not exceeding \$2,960.50.

2. Acme Drayage Company is directed to refund to Federal Envelope Company \$48.64, the amount in excess of the applicable charges set forth in Pacific Coast Tariff Bureau Local Freight Tariff No. 101, Cal.P.U.C. No. 36, for the transportation of property in the involved carrier's equipment for July of 1974.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 20th day of May, 1975.

Vernon L. Stinson
President
William J. Lyons
Leonard P. ...
Robert ...
Commissioners