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Decision No. S4628

ORIGINAL

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 SIGNAL TRUCKING SERVICE, LTD., a California corporation, and HARBOR BANANA DISTRIBUTORS, INC., a California corporation, GROWERS' MARKETING CO., a California corporation, VONS GROCERY CO., a Delaware corporation, LOS ANGELES BANANA DISTRIBUTORS, INC., a California corporation, and PACIFIC BANANA COMPANY, a Texas corporation.

Case No. 9827
(Filed November 19, 1974)

Allen Berk, Attorney at Law, for Signal Trucking Service, Ltd.; Charles L. Keeler, Attorney at Law, for Pacific Banana Company; and Howard Lynn, for Growers Marketing Company; respondents.
Mary Carlos, Attorney at Law, and E. E. Cahoon, for the Commission staff.

O P I N I O N

Public hearing was held before Examiner Fraser at Los Angeles on March 26, 1975 and the matter was submitted on a stipulation which was filed by the staff counsel on March 6, 1975.

The Commission staff, respondent carrier, and two shipper respondents were present at the hearing. The matter of alleged violation concerns undercharges resulting from Signal Trucking Service, Ltd.'s (Signal) failure to collect accessorial loading charges for shipments of bananas transported from Standard Fruit & Steamship Company, Pier A, Berth 208, Long Beach, and from United Brands Company, Berth 147, Wilmington, to Los Angeles area produce distributors.

The charges were supported by documentary evidence, supplemental data, and rate statements sponsored by Commission staff witnesses in Exhibits 1 through 8. The stipulation, executed by counsel for Signal and staff counsel, and served on all respondents, included a provision that the ocean portion of the transportation was, to the best knowledge and belief of respondent Signal, by proprietary vessel. The stipulation affirmed that the staff's allegations in the Order Instituting Investigation were all true and correct; that the staff's ratings were true and correct; and that the total undercharges are as follows (Stipulation, Appendix 2, and Exhibits 4, 5, 6, 7, and 8):

Los Angeles Banana Distributors, Inc. (Exhibit 4)	\$ 23.56
Harbor Banana Distributors, Inc. (Exhibit 5)	165.93
Pacific Banana Company (Exhibit 6)	4,137.43
Growers Marketing Co. (Exhibit 7)	3,132.72
Vons Grocery Co. (Exhibit 8)	44.44
	<u>\$7,504.08</u>

The stipulation provides for a fine of \$7,504.08 under Section 2100 of the Public Utilities Code, and it is agreed that the staff will recommend that no additional fine be imposed under Section 1070. The stipulation further provides that it will become inoperative if an additional fine is imposed under Section 1070 of the Public Utilities Code.

Discussion

The president of Growers' Marketing Co. (Growers) testified that he was advised Signal would take care of everything and that the rate to be charged was under the jurisdiction of the Interstate Commerce Commission. He testified that he is not informed on transportation matters and therefore relied on the information supplied

by Signal. He objected to paying undercharges which were incurred due to the carrier's error. Counsel for Pacific Banana Company (Pacific) made a brief closing statement. He advised his client was informed by a Signal executive that ICC rates were applicable and would be charged and collected. He noted that only shippers will be punished if these undercharges are collected since the additional charges can no longer be added to the purchase price.

Undercharges must always be collected, even when caused by error, hardship, or reliance on another's expertise.

In view of the record and the stipulation filed herein the Commission finds as follows:

1. Signal operates as a certificated highway common carrier and as a radial highway common carrier and a highway contract carrier.
2. Signal was served with the appropriate tariffs and all supplements thereto and is a party to and operates pursuant to various tariffs published by Western Motor Tariff Bureau, Inc., including Local, Joint and Proportional Freight and Express Tariff No. 111.
3. Signal employs 705 people in various categories, with terminals in Vernon, Wilmington, Oakland, and San Jose, operating with 178 trucks, 177 tractors, and 655 trailers.
4. Signal's gross operating revenue for the year ending on December 31, 1973 was \$17,457,455.74.
5. The ocean portion of the transportation connected with the shipments documented in Exhibits 1, 2, and 3 was by proprietary vessel, either privately owned by the importer or his subsidiary or privately chartered.
6. The transportation performed by respondent Signal as identified in Appendix 2 of the stipulation (Exhibits 4, 5, 6, 7, and 8) is subject to the jurisdiction of this Commission and has been performed at rates less than the applicable rates resulting in undercharges totaling \$7,504.08.

Conclusions

1. The transportation performed by Signal is subject to the jurisdiction of this Commission.

2. Signal has violated Sections 453, 494, and 532 of the Public Utilities Code.

3. Signal should be ordered to collect from the other respondents the difference between the charges billed and collected and the charges due under the applicable tariffs, the difference being \$23.56 from Los Angeles Banana Distributors, \$165.93 from Harbor Banana Distributors, Inc., \$4,137.43 from Pacific, \$3,132.72 from Growers, and \$44.44 from Vons Grocery Co.

4. Signal should pay a fine of \$7,504.08 under Section 2100 of the Public Utilities Code.

5. No fine should be imposed under Section 1070 of the Public Utilities Code.

6. Signal should be ordered to cease and desist from any and all unlawful operations and practices as a common carrier.

The Commission expects that Signal will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Signal or its attorney has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Signal Trucking Service, Ltd. shall pay a fine to this Commission pursuant to Public Utilities Code Section 2100 of \$7,504.08 on or before the fortieth day after the effective date of this order.

2. Signal Trucking Service, Ltd. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 6 and shall notify the Commission in writing upon collection.

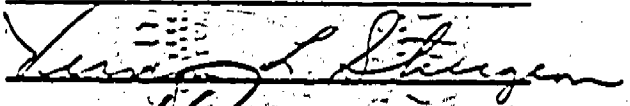
3. Signal Trucking Service, Ltd. shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of the sixty days, a report of the undercharges remaining to be collected, specifying the action taken to collect such undercharges and the result of such action, until such undercharges have been collected in full or until further order of the Commission. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of Signal Trucking Service, Ltd.'s operating authority until the report is filed.



4. Signal Trucking Service, Ltd. shall in connection with its common carrier operations cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a different amount than the applicable tariff rates and charges.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Signal Trucking Service, Ltd. and to cause service by mail of this order to be made upon all other respondents. The effective date of this order as to each respondent shall be twenty days after completion of service on that respondent.

Dated at San Francisco, California, this 8th
day of JULY, 1975.


President





Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.