

ORIGINAL

Decision No. 84687

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of ROSSI TRANSPORTATION, INC., a California corporation, FRED C. HOLMES LUMBER CO., a corporation, GEORGIA-PACIFIC CORPORATION, a corporation, and ALVIN STANDLEY.

Case No. 9826
(Filed November 19, 1974)

Robert C. Petersen, Attorney at Law, for
Rossi Transportation, Inc., respondent.
Freda F. Abbott, Attorney at Law, and
Kenneth Henderson, for the Commission
staff.

O P I N I O N

By its order dated November 19, 1974, the Commission instituted an investigation into the operations, rates, charges, and practices of Rossi Transportation, Inc. (Rossi), a California corporation. The purpose of the investigation was to determine whether Rossi performed transportation services for respondents Fred C. Holmes Lumber Co. (Holmes), Georgia-Pacific Corporation (Georgia-Pacific), and Alvin Standley (Standley) at less than authorized minimum rates in violation of Sections 3664 and 3737 of the Public Utilities Code.

Public hearing was held before Examiner Daly at Fort Bragg on May 14, 1975, and the matter was submitted.

Rossi holds a radial highway common carrier permit, a high-way contract carrier permit and a cement common carrier certificate. It operates three trucks and three tractors from its terminal in Fort Bragg. It reported gross operating revenue in the amount of \$59,075 for the year 1973 and \$28,997 for the year 1974.

A staff transportation field representative testified that he visited the office of Rossi during October 1973 and made an examination of the company records. He testified that he selected certain freight bills, copies of which were made and incorporated into Exhibit 1. Exhibit 1 consists of underlying documents relating to a total of 27 shipments, all of which were transported between the months of March and September 1973. It covers 8 shipments for Holmes, 5 shipments for Georgia-Pacific, and 14 shipments for Standley.

Exhibits 2, 3, and 4 were sponsored by a staff transportation rate expert, who utilized the information contained in Exhibit 1 to develop the minimum rates and charges for the transportation represented in said exhibit. If rated in accordance with the staff's contentions, the total undercharges covered by Exhibits 2, 3, and 4 amount to \$3,181.10.

The shipments of lumber for Georgia-Pacific, between its plants in Fort Bragg, Willits, and Ukiah apparently were transported pursuant to negotiated rates. All of the undercharges were admitted by respondent Rossi.

The lumber transported for Holmes involved split pickup and delivery shipments, which failed to comply with the requirements of Item 256, paragraph 5 of Minimum Rate Tariff 2 (MRT 2),¹ in

1 "5. A copy of each bill of lading, freight bill, accessorial service document, weighmaster's certificate, written instructions, written agreement, written request or any other written document which supports the rates and charges assessed and which the carrier is required to issue, receive or obtain by this tariff for any transportation or accessorial service shall be retained and preserved by the carrier, at a location within the State of California, subject to the Commission's inspection, for a period of not less than three years from the date of issue."

that Rossi failed to first obtain the documentations necessary to authorize such shipments.

Although a former employee of Holmes testified that he had prepared written instructions covering these shipments, neither Rossi nor Holmes could produce such written instructions or copies thereof. In contrast, the staff field representative testified that during the course of his investigation he found no instructions in the files of Rossi and, upon inquiring was told that no written instructions had been obtained.

The transportation performed for Standley involved shipments of grape stakes, which Rossi rated at commodity rates for lumber and forest products contained in MRT 2, which are listed in Item 685. The record clearly demonstrates that the commodity was grape stakes which consist of two by two inches split redwood stakes, varying in length from five to seven feet, and are predominantly used in vineyards. The staff field representative testified that these shipments had been delivered to vineyards and to a grape stake broker. Rossi contends that the stakes shipped to the broker could have been used for purposes other than as grape stakes.

The staff rate expert testified that regardless of its ultimate use, he rated the shipments under Item 160400, Sub 4, poles or stakes, plant: wooden, in the rough or rough turned, whether or not creosoted or otherwise preservatively treated, Class 35 in truck-load quantities. This was in conformity with the Commission's holding in Decision No. 83071 dated July 2, 1974 in Case No. 9655, wherein the Commission stated:

"Commodity rates are applicable if the commodity is listed in Item 685 of MRT, otherwise class rates are applicable. Item 685 contains three lists of specific products under the generic heading of Lumber and Forest Products (Exhibit 7). Neither grape stakes nor wooden plant stakes are found in Item 685. The closest items would be Poles, wooden, NOI (113063) and Posts, NOI, wooden (113100). The parenthetical numbers refer

to items in the governing classifications. Their purpose is to limit the application of the commodity rates to the specific products. The classification item reads as follows: 113060, Poles, wooden, NOI, Class 35 in truckload quantities; 113100, Posts, NOI, wooden, whether or not creosoted or otherwise preservatively treated, Class 35 in truckload quantities. Only by analogy could grape stakes be included in these descriptions."

The Commission specifically held therein that:

"7. Grape stakes are encompassed in the classification description, Poles or stakes, plant, wooden, in the rough or rough turned, whether or not creosoted or otherwise preservatively treated."

A rate expert, testifying on behalf of Rossi, attempted to show that a lower class rate could have applied to the grape stake shipments under Item 113080 of the NMF Classification, due to an exception from Item 1050, Exception Ratings Tariff No. 1. Item 113080 applies to Poles or stakes, wooden, further finished than in the rough or rough turned.

There is no need to test the validity of rating these shipments under Item 113080, because the exception relied upon was eliminated from the tariff by Decision No. 77979, effective January 1, 1971 in Case No. 7858, which preceded the time of the shipments in question.

The staff recommends that Rossi be fined the amount of the undercharges (\$3,181.10) and that a punitive fine in the amount of \$500 be imposed in view of Rossi's history of six prior rate violations extending from 1959 to 1970.

Findings of Fact

1. Rossi operates pursuant to radial highway common carrier and contract carrier permits.

2. The shipments covered by the staff's investigation were transported during the period of March through September 1973 for the account of respondents Holmes, Georgia-Pacific, and Standley.

3. Rossi's gross operating revenues for 1973 amounted to \$59,075 and for 1974 amounted to \$28,997.

4. The shipments for Georgia-Pacific were transported for less than the rates applicable in MRT 2.

5. The split pickup and delivery shipments for Holmes fail to comply with requirements of Item 256, paragraph 5 of MRT 2 in that Rossi failed to first obtain written instructions covering said shipments.

6. The shipments of grape stakes for Standley should have been rated under the classification description, poles, or stakes, plant, wooden, in the rough or rough turned, whether or not creosoted or otherwise preservatively treated.

7. The undercharges developed in Exhibits 2, 3, and 4 amount to \$3,181.10.

Conclusions

1. Rossi violated Sections 3664 and 3667 of the Public Utilities Code.

2. Rossi should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$3,181.10.

3. Rossi should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

The Commission expects that Rossi 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 Rossi, or his 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 the proceeding for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Rossi Transportation, Inc. shall pay to this Commission a fine of \$3,181.10 pursuant to Public Utilities Code Section 3800 and a fine of \$500 pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Rossi Transportation, Inc. shall pay interest on the \$500 fine at the rate of seven percent per annum; such interest is to commence upon the day the payment of the fine is delinquent.
2. Rossi Transportation, Inc. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 7 and shall notify the Commission in writing upon collection and payment.
3. Rossi Transportation, Inc. shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges or payments ordered to be collected and paid by paragraph 2 of this order, or any part of such undercharges or payments remain uncollected or unpaid 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 or the payments remaining to be made, specifying the action taken to collect such undercharges or make such payments and the result of such action, until such undercharges have been collected in full or until the total payments have been made or until further order of the Commission.
4. Rossi Transportation, Inc. shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the rates and charges prescribed by this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Rossi Transportation, Inc. 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.

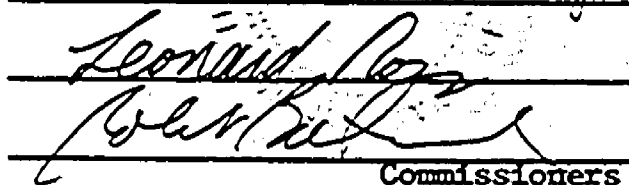
Dated at San Francisco, California, this 22nd day of JULY, 1975.

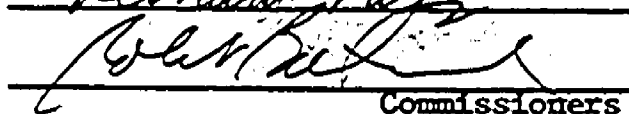


President



Vernon L. Sturgeon



Leonard Ross


Commissioners

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