

ORIGINAL

Decision No. 84750

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

E. R. DALE and JAMES A. SMALL,
 a partnership, doing business
 as C & D POULTRY EXPRESS, for
 hearing of Finance and Accounts
 Division Audit No. 7019

Application No. 55517
 (Filed February 25, 1975)

James A. Small, for himself applicant.
T. H. Peceimer, for the Commission staff.

O P I N I O N

Section 5003.1 of the Public Utilities Code requires, among other things, "...every person or corporation owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, at the time of filing such report,^[1] pay to the commission a fee equal to one-third of 1 percent of the amount of such gross operating revenue; provided, however, that for any particular fiscal year the commission, with the approval of the Department of Finance, may fix said fee at less than one-third of 1 percent of said amount."

The Finance and Accounts Division (F&A) of the Commission determined in their Audit No. 7019 that E. R. Dale and James A. Small, doing business as C & D Poultry Express (C&D), were reporting and paying fees on approximately one-third of their gross operating revenue for the period beginning with the second quarter of 1971 through the first quarter of 1974. A report of the audit dated July 1, 1974 was sent to C&D, which advised that if no protest was received within ten days a demand for payment of the additional fees would be made.

1/ Reports showing the gross operating revenue are required to be filed between the first and fifteenth days of January, April, July, and October.

By a letter dated July 10, 1974, C&D protested the F&A audit on the grounds that "Our business is not categorized as a true trucking company, but a business of service due to the fact that it is more loading and unloading poultry than actual hauling."

C&D requested a hearing by a letter dated October 21, 1974. Their request was docketed as this application. A public hearing was held in Modesto on April 21, 1975 before Examiner Tanner.

James A. Small appeared and testified on behalf of applicants. He explained that their business consists of transporting hens from brooders to laying houses. After the birds are no longer egg producers, they are transported to poultry evisceration houses. The service in either direction consists of catching, carrying, and stuffing(placing the birds in pens) and the transportation. According to Mr. Small, the loading and unloading accounts for almost all the labor cost in performing the service. He explained that this fact was the basis for C&D's position that the charge for the loading and unloading was not part of the transportation and not subject to the transportation rate fund fees. He explained on cross-examination that the poultry was at no time the property of C&D and that applicants' primary business was the transportation of poultry.

The Commission's staff contended that the loading and unloading functions performed by C&D were accessorial services which are a necessary part of the transportation service and as such are subject to the gross revenue fees. In support of this stand the

staff cited Sections 209 and 3549 of the Public Utilities Code^{2/} and Decision No. 84315. (In re Central Mobile Home Movers, Application No. 54563, April 15, 1975, unreported.) In the cited case it was held that the disassembly and setup of mobile homes are natural and necessary parts of the transportation service which are strictly incidental to and are performed in conjunction with the carrier's primary business of transportation. The staff concluded that the instant case is analogous in that the catching, carrying, and stuffing are directly incidental to applicant's primary business of poultry transportation.

There is little question that those functions which precede and follow the actual transportation service here in question, are essential if the transportation is to occur. Section 209 of the Public Utilities Code will not permit the separation of such incidental services from the transportation of property function. Furthermore, the determination of the fee required to be paid pursuant to Section 5003.1 must be based on the gross operating revenue derived from the "transportation of property."

Findings

1. C&D is a highway permit carrier engaged in the transportation of poultry over the public highways for compensation.

2/ Section 209 reads:

"209. 'Transportation of property' includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and handling, and the transmission of credit by express corporations."

Section 3549 reads:

"3549. Any person or corporation engaged in any business or enterprise other than the transportation of persons or property who also transports property by motor vehicle for compensation shall be deemed to be a highway carrier for hire through a device or arrangement in violation of this chapter unless such transportation is within the scope and in furtherance of a primary business enterprise, other than transportation, in which such person or corporation is engaged."

2. The catching, carrying, and stuffing service performed by C&D prior to the transportation of poultry and the unloading, including carrying and placing in pens subsequent to the transportation are services which are incidental to the transportation of property, and the revenue obtained by C&D for such services is subject to the transportation rate fund fee.

Conclusion

Audit No. 7019 is correct. C&D should be required to remit to the Commission the fees determined by said audit to be due including the penalty and any fees due which may have occurred subsequent to the first quarter of 1974.

O R D E R

IT IS ORDERED that:

1. E. R. Dale and James A. Small, doing business as C&D Poultry Express, shall remit to the Commission \$1,626.72 pursuant to the determination of Audit 7019.

2. Applicants shall remit to the Commission all fees due for service found herein to be subject to transportation rate fund fees, occurring after March 1974.

3. The payment of fees specified in Ordering Paragraphs 1 and 2 shall be made 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 5th
day of AUGUST, 1975.

William L. Symons President
Vernon L. Stalger
John
Robert W. Holmes Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.