

Decision No. 84941

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of LARRY KLENSKE, an individual, doing business as KLENSKE BROS. TRUCKING; JACK HOLT, an individual, doing business as J. H. TRUCKING; and F. V. Moore, an individual; and JOHN LIVACICH PRODUCE, INC., a California corporation.

Case No. 9926
(Filed June 3, 1975)

Philip B. Wagner, Attorney at Law, for
John Livacich Produce, Inc., a
California corporation; Larry Klenske,
Jack Holt, and F. V. Moore, for
themselves; respondents.
Elmer Sjostrom, Attorney at Law, and
E. H. Hjelt, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates, charges, and practices of Larry Klenske (Klenske), an individual, doing business as Klenske Bros. Trucking; Jack Holt, (Holt), an individual doing business as J. H. Trucking; and F. V. Moore (Moore), an individual; to determine whether they have violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code by transporting property for John Livacich Produce, Inc., (Livacich) a California corporation, at less than the established minimum rates.

A public hearing was held in San Bernardino on August 5, 1975, before Examiner James D. Tante and the matter was submitted on that date.

At the hearing the staff presented the testimony of two members of the Compliance and Enforcement Branch of the Commission's Transportation Division. Respondents Klenske, Holt, and Moore also testified. The following exhibits were received:

Exhibit 1: Stipulation of facts, issues, and penalty recommendations between Klenske and staff and Appendices 1 and 2 attached thereto;

Exhibit 2: Copies of certain shipping data regarding Moore and Livacich;

Exhibit 3: Carrier data regarding Moore;

Exhibit 4: Copies of certain shipping data regarding Holt and Livacich;

Exhibit 5: Carrier data regarding Holt.

Klenske, Holt, and Moore are each engaged in the business of transporting property for compensation upon the public highways. Before January 1, 1974, each was issued a radial highway common carrier permit, and each was served with all applicable minimum rate tariffs and the distance table, together with all supplements and additions thereto. During 1974 each carrier transported shipments for respondent Livacich.

On various days during December 1974, and January, February, and March 1975, a representative of the Commission staff visited the places of business of Klenske, Holt, and Moore, and examined their records covering the shipments for respondent Livacich.

Klenske's place of business was 313 Primrose Avenue, Redlands; his gross operating revenue during 1974 was \$35,545.54; and his equipment consisted of a 1972 Peterbilt tractor and a 1974 Utility trailer.

Holt's place of business was 534 South Joyce Street, Rialto; his gross operating revenue during 1974 was \$43,344.04; and his equipment consisted of a 1968 Kenworth tractor and a 1971 American trailer.

Moore's place of business was 22111 Newport Avenue, Space 100, Colton; he maintained a shop and yard at 3760 Placentia Lane, Riverside; his gross operating revenue during 1974 was \$62,482.71; and his equipment consisted of a 1968 Kenworth tractor, a 1968 Utility trailer, a 1967 Utility trailer, and a 1959 Tempte trailer.

The undisputed evidence shows that during 1974 the respondent carriers charged the shipper Livacich less than the lawfully prescribed minimum rates in the following amounts: Klenske, \$2,336.23; Holt, \$890.28; Moore, \$427.61. In each case, these sums, which were undercharges by the respondent carriers, have now been paid in full by the respondent shipper Livacich. The undercharges were the result of a device by which spurious deductions for alleged trailer rental were made from the transportation charges prescribed by Minimum Rate Tariff 8 and supplements thereto.

Findings

1. Klenske, Holt, and Moore are each engaged in the business of transporting property for compensation upon the public highways pursuant to radial highway common carrier permits.
2. Klenske, Holt, and Moore were each served with all applicable minimum rate tariffs and the distance table, together with all supplements and additions thereto.
3. During 1974, while engaged in the business of transporting property for compensation for respondent Livacich, the respondent carriers charged less than the lawfully prescribed minimum rates as follows: Klenske, \$2,336.23; Holt, \$890.28; Moore, \$427.61; and in each instance, the amount of the undercharge has now been paid to the respective respondent carriers by the respondent shipper Livacich.
4. All respondents were cooperative with the staff at all times during the investigation.

Conclusions

1. Respondents Klenske, Holt, and Moore each violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.
2. Klenske should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$2,336.23 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$750; Holt should pay a fine pursuant to Section 3800 in the amount of \$890.28 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$500; and Moore should pay a fine pursuant to Section 3800 in the amount of \$427.61 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$400.
3. Respondents Klenske, Holt, and Moore should be directed to cease and desist from violating the rates and rules of the Commission.

O R D E R

IT IS ORDERED that:

1. Larry Klenske, an individual, doing business as Klenske Bros. Trucking, shall pay a fine of \$750 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Larry Klenske shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.
2. Larry Klenske shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$2,336.23 on or before the fortieth day after the effective date of this order.

3. Jack Holt, an individual, doing business as J. H. Trucking, shall pay a fine of \$500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Jack Holt shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

4. Jack Holt shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$890.28 on or before the fortieth day after the effective date of this order.

5. F. V. Moore shall pay a fine of \$400 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. F. V. Moore shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

6. F. V. Moore shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$427.61 on or before the fortieth day after the effective date of this order.


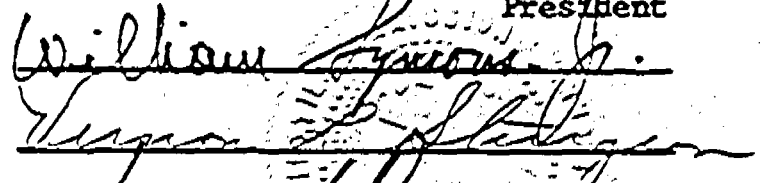
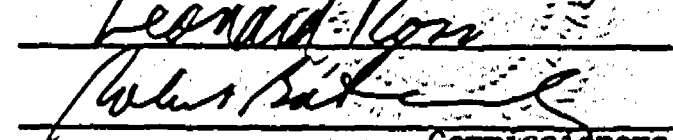
7. Larry Klenske, Jack Holt, F. V. Moore, and each of them shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent carriers Larry Klenske, Jack Holt, and F. V. Moore and to cause service by

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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 30th day of SEPTEMBER, 1975.

 President
William Lyons, Jr.

Leonard Ross
 Commissioners