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Decision No. 85139

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 RUSSELL T. }
PHILLIPS, an individual, dba Russ }
Phillips Trucking; and ELK GROVE MEAT }
CO., a California corporation; and }
ARMOUR & CO., a Delaware corporation. }

Case No. 9878
(Filed February 19, 1975)

Hilton Ryder, Attorney at Law, for Russell T.
Phillips, dba Russ Phillips Trucking,
respondent.

Mary Carlos, Attorney at Law, and Kenneth K.
Henderson, for the Commission staff.

O P I N I O N

Statement of Facts

By its order dated February 19, 1975, the Commission instituted an investigation into the operations, rates, charges, and practices of Russell T. Phillips, dba Russ Phillips Trucking (Phillips), Elk Grove Meat Co. (Elk Grove), and Armour & Co. (Armour). The purpose of the investigation was to determine whether Phillips transported fresh meat for respondents Elk Grove and Armour at less

than authorized minimum rates in violation of Sections 3664, 3667, and 3737 of the Public Utilities Code,^{1/} and in the event violations

1/ Public Utilities Code, Section 3664:

"It is unlawful for any highway permit carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the commission under this article."

Public Utilities Code, Section 3667:

"No highway permit carrier shall charge, demand, collect, or receive for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges or greater than the maximum rates and charges applicable to such transportation established or approved by the commission; nor shall any such carrier directly or indirectly pay any commission or refund, or remit in any manner or by any device any portion of the rates or charges so specified, except upon authority of the commission."

Public Utilities Code, Section 3737:

"Upon the issuance by the commission of any decision or order made applicable to a particular class or group of carriers, or to particular commodities transported or areas served, the commission shall only be required to serve a copy of the decision or order without charge upon each party appearing in the case or proceeding resulting in such decision or order. Upon the issuance of a permit to operate as a highway carrier, the carrier shall obtain copies of each tariff, decision, or order previously issued that is then applicable to the class or classes of transportation service authorized by the permit. Thereafter, the carrier shall maintain copies of all tariffs, decisions or orders subsequently issued that are currently applicable to the class or classes of transportation service authorized by the permit, and shall observe any tariff, decision, or order applicable to it.

"The commission shall arrange to furnish copies of any tariff, decision or order previously issued that is currently applicable to the class or classes of transportation service each highway carrier is authorized to perform. For such service

(Continued)

occurred, whether Code Sections 3800 and 3774^{2/} should be invoked to order collection of the undercharges, impose fines, and/or order cancellation, suspension, or revocation of all or part of Phillips' operating authority.

1/ Continued

the commission shall establish a reasonable schedule of charges, not to exceed cost, for individual tariffs, decisions and orders as well as annual charges for tariffs, decisions and orders applicable to each class of transportation service.

"The commission shall, after thirty (30) days written notice, revoke the permit of any carrier failing to obtain and maintain currently applicable tariffs, decisions and orders."

2/ Public Utilities Code, Section 3800:

"Whenever the commission, after a hearing, finds that any highway permit carrier has charged, collected, or received for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges applicable to such transportation established or approved by the commission, or has directly or indirectly refunded or remitted in any manner or by any device any portion of such minimum rates or charges, or has paid a commission, without an order of the commission so authorizing, the commission shall require such carrier to collect the undercharges involved and may impose upon the carrier a fine equal to the amount of such undercharges. All such fines shall be paid into the State Treasury to the credit of the General Fund. The remedy and penalty provided by this section are cumulative and shall not be a bar to or affect any other remedy or penalty provided for in this chapter, or to the exercise by the commission of its power to punish for contempt.

Public Utilities Code, Section 3774:

"The commission may cancel, revoke, or suspend the operating permit or permits of any highway carrier upon any of the following grounds:

- (a) Any illegally conducted highway carrier operations.

(Continued)

Public hearing was held August 5, 1975 before Examiner Weiss in Fresno and submitted August 15, 1975 upon submission of concurrent briefs. Respondent Elk Grove did not answer or appear.

Phillips is engaged in the business of transporting property over the public highways of this state for compensation, holding a radial highway common carrier permit issued November 12, 1963; a highway contract carrier permit issued July 28, 1972; and a livestock carrier permit issued July 23, 1973.

2/ Continued

- (b) The violation of any of the provisions of this chapter, or of any operating permit issued thereunder.
- (c) The violation of any order, decision, rule, regulation, direction, demand or requirement established by the commission pursuant to this chapter.
- (d) The conviction of the highway carrier of any misdemeanor under this chapter.
- (e) The rendition of a judgment against the highway carrier for any penalty imposed under this chapter.
- (f) The failure of a highway carrier to pay any fee imposed upon the carrier within the time required by law.

"As an alternative to the cancellation, revocation, or suspension of an operating permit or permits, the commission may impose upon the holder of such permit or permits a fine of not exceeding five thousand dollars (\$5,000). The commission may assess interest upon any fine imposed, such interest to commence upon the day the payment of the fine is delinquent. All fines and interest collected shall be deposited at least once each month in the State Treasury to the credit of the General Fund."

In 1970 Phillips became either insolvent or unable to pay his debts as they matured, and accordingly petitioned the United States District Court, Eastern District of California, for proceedings under Chapter XI of the Bankruptcy Act. On August 10, 1970 an order was made by Referee in Bankruptcy Charles F. Hamlin, appointing Phillips as debtor in possession. Since that date Phillips has continued to operate the trucking business as debtor in possession.^{3/}

By Decision No. 80609 issued February 23, 1973 in Application No. 53242, Phillips secured authority from this Commission, pursuant to Section 3666, to deviate from the minimum rates for the transportation of fresh meat for Armour between Dixon and the Los Angeles area. Prior to issuance of Decision No. 80609 granting the deviance, Phillips had correctly applied Minimum Rate Tariff 2 for Armour shipments between Dixon and Los Angeles. If drops were made in Fresno or Bakersfield, this same tariff was used except that drop charges were also collected. After Decision No. 80609, Phillips used the newly authorized deviation rate not only for Armour's Dixon to Los Angeles shipments, but also for intermediate drops such as Fresno and Bakersfield, continuing to collect drop charges for the latter.

In either June or July of 1973 a question arose in Phillips mind as to the propriety of using the deviation rate on the intermediate drops on Armour shipments, and Phillips asserts he then initiated discussions with Armour over possible undercharges. Armour did not agree and these discussions went on for five months until early December 1973. At that point, Phillips testified, he asked his bookkeeper to cull and photocopy those Armour freight bills involving intermediate drops - his intention being to invoice Armour for undercharges. On December 11, 1973 a Commission transportation field representative visited Phillips offices.

^{3/} Copies of the debtor's petition and Order No. 8173 of the United States District Court, Eastern District of California in proceedings for an arrangement under Chapter XI of the Bankruptcy Act were received into evidence as Exhibits 8 and 9, respectively.

This field representative testified he followed up his initial visit with others, examining respondent's records covering the period June 28, 1973 to December 1, 1973. During the second visit, on December 12, 1973, this representative was asked about Phillips' practice of using the deviation rate on the intermediate drops at Fresno and Bakersfield. The representative did not know if use of the deviation rate was appropriate and suggested that Phillips get a ruling from the Commission. On January 10, 1974 Phillips wrote the Commission requesting a ruling.^{4/} The Commission responded February 2, 1974 advising that Minimum Rate Tariff 2 should apply to split delivery shipments of the type exemplified by the transaction described in Phillips' January 10, 1974 letter request. Immediately thereafter Phillips invoiced Armour for \$21,717.81 to collect the undercharges on 167 freight bills covering the period from February 26, 1973 to February 8, 1974.^{5/}

Phillips' bookkeeper has had no formal rating training. She "picked up" her rating knowledge after she joined Phillips in 1971. At times she has sought and received rating assistance from the above-noted Commission field representative. She testified that at a date uncertain she learned from a rate clerk of a subhauler that for Elk Grove shipments she was using a temperature control rating table which had expired May 15, 1973. Accordingly at a subsequent unknown date Phillips invoiced Elk Grove for undercharges in the amount of \$282.29 covering 12 shipments in the period between July 27, 1973 and September 28, 1973. Elk Grove paid these undercharges.

4/ A photocopy of Phillips letter was received as Exhibit 6.

5/ On February 12, 1974 Phillips billed Armour. In turn, Armour on March 1, 1974 paid Phillips. Phillips in turn on March 21, 1974 deposited the \$21,717.81 in the Chapter XI account (See Exhibit 10 - photocopy of bank deposit slip).

Following his inspection, the staff transportation field representative transmitted the information he had gleaned from examination of Phillips' books to the Transportation Rate Analysis Unit of the Commission. This Unit prepared a detailed analysis covering part of the period embracing the Armour and Elk Grove undercharges, and in September 1974, Phillips, Elk Grove, and Armour were named respondents in the Commission investigation order which issued.

Before the hearing Armour and the Commission staff arrived at a stipulation, presented at the hearing, whereby Armour conceded it did pay Phillips less than the applicable rates and charges for transportation performed by Phillips. In that stipulation Armour admits it was billed and that it paid Phillips \$21,717.81 for undercharges. An itemized listing^{6/} which supported the Phillips billing to Armour - part of the stipulation entered - detailed 167 shipments in the amount of \$21,717.81 covering the period February 26, 1973 through February 8, 1974.

Discussion

At onset of the hearing Phillips entered two motions: The first challenging the jurisdiction of the Commission to hear the matter at all, alleging that "exclusive jurisdiction" over the property of bankrupts is vested elsewhere; and the second in substance a motion for summary judgment "based on the good faith of respondent as demonstrated by the undisputed facts of the stipulation." Both motions were taken under consideration by the Examiner who made a tentative ruling to go on with the hearing. We deny both motions.

6/ The Armour-staff stipulation was received as Exhibit 1.

First, we consider the jurisdictional challenge. Phillips alleges that the Commission staff, by requesting imposition of fines under Sections 3800 and 3774 of the Public Utilities Code of California^{7/} is attempting to impose sanctions against the United States District Court, whereas, he asserts, the Commission lacks jurisdiction to do so under Section 311 of the Bankruptcy Act.^{8/} Respondent Phillips argues that Section 57(j)^{9/} of that Act does not allow penalties or forfeitures beyond "the amount of the pecuniary

^{7/} Supra, Note 2.

^{8/} Section 311 of the Bankruptcy Act, 11 USC § 711, provides:

"Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located."

^{9/} Section 57(j) of the Bankruptcy Act, 11 USC § 93(j), provides:

"Debts owing to the United States or to any state or any subdivision thereof as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued on the amount of such loss according to law."

loss". He further argues that Rule 11-44^{10/} of the Rules of Bankruptcy Procedure operate as a broad restraining order to restrain the Commission from commencement of any proceedings against Phillips, a debtor-in-possession, upon pain of contempt. We believe respondent Phillips misconstrues the law.

An arrangement in bankruptcy under Chapter XI of the Bankruptcy Act, with origins resting in the common law composition, is a proceeding by which an embarrassed debtor, whose business appears salvageable, enters into an arrangement with his creditors subject to approval of the District Court. Under its provisions the business continues to operate, paying off creditors on a pro rata basis, or is granted an extension of time in which to pay its debts. Often, as here, the Court permits the debtor to remain in possession operating the business. We recognize that Section 57(j) of the Bankruptcy Act prohibits allowance of penalties accruing prior to bankruptcy,^{11/} but the subdivision does not exempt the debtor-in-possession from state laws applicable to the business he operates after the bankruptcy. We find the provisions of 28 USC 959(b) more relevant to the instant case than Section 57(j) of the Bankruptcy Act. Section 959(b) provides:

10/ Rule 11-44 of the Rules of Bankruptcy Procedure, provides:

"(a) State of Actions and Lien Enforcement. A petition filed under Rule 11-6 or 11-7 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor or the enforcement of any judgment against him, or of any act or the commencement or continuation of any court proceeding to enforce any lien against his property, or of any court proceeding, except a case pending under Chapter X of the Act, for the purpose of the rehabilitation of the debtor or the liquidation of his estate."

11/ Cf. N. Y. v Jersawit (1924) 263 US 493, at 496.

"(b) A trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the state in which such property is situated, in such manner that the owner or possessor thereof would be bound to do if in possession thereof." (Emphasis added.)

Under this statute, a debtor-in-possession is made fully subject to the laws of the State of California and to any penalties or fines which may arise from abuse of such laws. It would be meaningless to subject a debtor-in-possession to regulation by the Commission but to hold that they are exempt from the sanctions with which the Commission enforces compliance.

The Supreme Court of the United States in Boteler v Ingels^{12/} held that neither a tax liability nor the penalties incurred by a trustee after bankruptcy is declared are governed by Section 57 or its subdivisions, and noted that a trustee in bankruptcy conducting a business "shall...be subject to all state and local taxes applicable to such business the same as if such business were conducted by an individual or corporation..." In Boteler the Supreme Court stated that if a trustee were exempt from penalty, a "state would thus be accorded the theoretical privilege of taxing businesses operated by trustees in bankruptcy on an equal footing with all other businesses, but would be denied the traditional and almost universal method of enforcing payment".^{13/} The United States Court

^{12/} Boteler v Ingels (1939) 308 US 57, wherein the court sustained a penalty against a trustee in bankruptcy who failed to pay automobile license taxes incurred while he was operating the business of the bankrupt estate for the purpose of liquidation.

^{13/} Id., at 61.

of Appeals, Second Circuit, cited Boteler in In re Samuel Chapman, Inc. ((1968) 394 F 2d 340) for the proposition that the debtor-in-possession is liable for penalties incurred during its period of operation under the Bankruptcy Act. The Court stated (at p. 341) "There is nothing in Section 57(j) which would lead to the disallowance of claims against the bankrupt estate of penalties incurred during the period when the debtor was in possession under a Chapter XI arrangement."

This Commission, emphasizing the importance of these penalties under Section 3800 to the regulatory scheme, in In re Kessler (1965) 64 CPUC 755, at p. 764 stated:

"The Commission does not direct the collection of undercharges in order to reward guilty carriers. Quite the contrary. In 1963 the Commission supported, and the Legislature enacted, a bill which has now authorized the Commission to levy against such carriers, in addition to all other penalties, a fine equal to the amount of the undercharges. The purpose of this legislation was to prevent the inequitable windfall which would otherwise result from the Commission's concern for the integrity of the minimum rates. A carrier who undercuts the minimum rates may thereby attract business which would otherwise go to his competitors; in such a case, it would be unjust to allow him later to obtain the full minimum charges after all."

We conclude that the penalties provided under Sections 3800 and 3774 of the California Public Utilities Code are as vital to maintenance of the integrity of the minimum rate regulatory scheme as tax penalties are to effective tax collection. We believe the rationale of Boteler and Chapman, supra, applies equally to the statutory provisions of the California Public Utilities Code providing for fines or penalties which are at issue here, and accordingly conclude that after bankruptcy, Section 57(j) of the

Bankruptcy Act does not exempt a debtor-in-possession from the operation of our Code or relieve the business he operates as debtor-in-possession from liability for fines and penalties for his derelictions in operating that business. There being nothing inconsistent in these conclusions with the provisions of Chapter XI, Section 311 of the Bankruptcy Act does not serve to exclude our jurisdiction, and Rule 11-44 of the Rules of Bankruptcy Procedure does not operate as a restraining order restraining this Commission from proceeding against Phillips.

The Commission accordingly determines that our jurisdiction attaches, and we deny Phillips' motion to dismiss for lack of jurisdiction.

Proceeding to the second prefatory motion made by respondent Phillips - for summary judgment "based on the good faith of respondent as demonstrated by the undisputed facts of the stipulation" - we see no reason to render summary judgment, and we affirm the Examiner's decision to proceed to hearing. Summary judgment is a drastic remedy and is never warranted except on a clear showing that no genuine issue as to any material fact remains for hearing.^{14/} Aside from the procedural defect incurred by respondent's failure to follow Commission Rule 56,^{15/} we note that in deciding a motion for summary

14/ Shultz v Manufacturers & Traders Trust Co. (1940) DCNY, 1 FRD 451 at 452.

15/ C.P.U.C. Rules of Practice and Procedure, Rule 56:

"Motion to Dismiss. ... (other than a motion based upon a lack of jurisdiction) any proceeding before this Commission, which is based upon the pleadings or any matter occurring before the first day of hearing may only be made upon five days' written notice thereof duly filed and served upon all parties to the proceeding and all other parties upon whom service of copies of the pleadings are therein shown to have been made."

judgment, all doubts are resolved against the moving party and in favor of the opposing party. The fact of Phillips' good faith is obviously very much at issue despite the undisputed facts of the stipulation. If anything, however, the facts of the stipulation highlight that issue. The transportation involved was performed over a period of three to ten months before the actual billings, and despite respondent Phillips' asserted doubts as to the appropriate rate on the Armour shipments, the undercharges continued for five months thereafter. The motion for summary judgment is denied.

Aside from other evidence, the staff sponsored three particularly relevant exhibits. Exhibit 2 consists of four bound volumes containing photocopies of freight bills and underlying documents relating to a total of 12 shipments for Elk Grove, and a total of 118 shipments for Armour. All were transported between April 20, 1973 and November 30, 1973. Exhibits 4 and 5 are summaries of data derived from Exhibit 2, and the records of Phillips, and develop in comparative form the actual rates charged, and the legal minimum rates and charges which should have been charged for the transportation represented in the exhibits.

By billing Armour and Elk Grove for these undercharges, Phillips admits they happened. At the hearing Phillips described how they arose; it applied the deviation rate authorized for Dixon-Los Angeles shipments to intermediate stops, and used an outdated rate table for transportation of chilled meat. The undercharge amounts billed to Armour were the same or substantially the same figures arrived at by the staff in its summary. The staff and Armour stipulated using the amounts actually billed by Phillips, in effect thereby sanctioning them as the applicable amounts of the undercharges. For purposes of this decision, we adopt this interpretation as reflecting the correct amount of the undercharges for those shipments.

No appearance having been made by Elk Grove to make issue with the staff interpretation of undercharges applicable to the 12 shipments for Elk Grove, we accept the staff computation of \$282.29 as the total undercharges applicable to those shipments.

But we cannot stop here. The staff limited its summary and recommendations to a finding of undercharges (and appropriate fine under Section 3800) of \$15,068.59, which cover only a portion of the actual undercharges revealed by this investigation, namely, the 118 Armour and 12 Elk Grove shipments between April 20, 1973 and November 30, 1973. There are more. Phillips and Armour in effect admitted to more when Phillips invoiced Armour and Armour paid for undercharges applicable to an additional 57 shipments made during the periods February 26, 1973 through April 19, 1973, and November 30, 1973 through February 8, 1974. Our February 19, 1975 order instituting investigation specifically stated that the scope of the investigation "...includes, but is not limited to..." the transportation represented by 118 Armour and 12 Elk Grove freight bills incurred during the April 20, 1973 to November 30, 1973 period (emphasis added.) Having ascertained not inconsiderable additional undercharges in the Armour shipments, we would be sadly lacking in our responsibility were we not to include these additional undercharges.

Accordingly, we find the total undercharges attributable to the Armour shipments to be \$21,717.81, and the total attributable to the Elk Grove shipments to be \$282.29, for a combined total of \$22,000.10.

Phillips contends that he acted in "good faith" and therefore no sanctions are appropriate. We cannot agree. Phillips testified he "suspected he was charging Armour an incorrect rate" as early as June or July 1973. But neither he nor his rate clerk took the logical and reasonable step indicated once doubt arose - that of checking with this Commission. Neither he nor his rate clerk even discussed the Armour rate with the local Commission representative (as had frequently been done in previous occasions) until December, and then only after that representative had visited their office and had begun to make the examination of records which subsequently resulted in this investigation. Considering the totality of circumstances we cannot accept the delay of five months as reasonable. It stretches credulity too far to find such a delay as indicative of "good faith" as respondent would have us do. We are not unmindful that Phillips has drawn water at this well before.^{16/} We see no reason in this

16/ The Commission records evidence the following history of proceedings involving Phillips:

A comprehensive survey conducted 8-18-69 disclosed violations as to documentation and undercharges approximating \$600. No undercharge letter was issued. The file was concluded by admonishment conference. A comprehensive survey was conducted October 29, 1968 and an undercharge letter issued. Carrier collected \$884.37 which was verified. Carrier was placed on Official Notice 10-24-68 for violation of G.O. 102-C. Operational survey conducted 3-21-67. No violations disclosed. Formal Case No. 7179, O.I.I., 8-28-61, hearing 12-28-61, Decision No. 63441 ordered suspension of operations for period 4-23-62 through 4-27-62 and collection of undercharges. Order to Show Cause for failure to respond to Decision No. 63441 served 6-13-63. Decision No. 67367, Case No. 7179, issued 6-19-64, imposed fine of \$3,500 for contempt.

case not to assess a fine of \$22,000.10 as provided under Section 3800. Not to do so would result in an inequitable windfall to Phillips. It is argued that under the Chapter XI proceedings the benefit of the windfall does not inure to Phillips, but rather would go to his creditors. We do not agree. The sooner the creditors are paid off the sooner Phillips regains unfettered control over the operations of his company. Thus a substantial benefit would indeed inure to Phillips were the windfall to remain.

Lastly, considering Phillips' overall record and his dilatory approach to his known responsibilities respecting the Armour portion of this case, we conclude that as an equitable alternative to cancellation, revocation, or suspension of his operating permits under Section 3774, a fine of \$750 as requested by the staff is not unreasonable. Phillips must also be ordered to cease and desist from deviating without authority from the rates, rules, and regulations of this Commission.

Findings

1. Phillips is engaged in transporting property for compensation under various authorities granted by this Commission.
2. Since August 10, 1970 Phillips has operated his business as debtor-in-possession under Chapter XI proceedings in the U.S. District Court, Eastern District of California.
3. Effective February 23, 1973 Phillips obtained a deviation from Minimum Rate Tariff 2 for shipments for Armour from Dixon to certain specific zones in Los Angeles.
4. Between February 26, 1973 and February 8, 1974, Phillips without authorization applied deviation rates to intermediate point shipments, and consequently charged Armour less than the minimum rates set forth in Minimum Rate Tariff 2 in violation of Sections 3664, 3667, and 3737 of the Public Utilities Code.

5. Between July 27, 1973 and September 28, 1973, Phillips applied an expired temperature control rating table to some shipments, and consequently charged Elk Grove less than the minimum rates set forth in Minimum Rate Tariff 2 in violation of Sections 3664, 3667, and 3737 of the Public Utilities Code.

6. Phillips' failure to assess the prescribed minimum rates resulted in undercharges in the total amount of \$22,000.10 ascribable to the two shippers.

7. As to the Armour shipments, Phillips "suspected" in either June or July 1973 that he was undercharging Armour but took no reasonable steps to verify his interpretation of the tariff and his authorized deviation for five months, and then acted only after a Commission representative visited and began an examination of his books.

8. Phillips' delay was unreasonable under the circumstances.

9. Before being so ordered by this Commission, Phillips on his own made demand upon the two shippers and collected undercharges in the amount of \$22,000.10.

10. The records of this Commission pertaining to Phillips show a history of prior undercharge infractions and subsequent fines and suspension.

11. Pursuant to the provisions of Section 3800 of the Public Utilities Code, Phillips should be assessed a fine in the amount of the undercharges.

Conclusions

1. A debtor-in-possession operating a business under Chapter XI of the Bankruptcy Act is not exempted from liability for fines and penalties levied by this Commission by reason of his dereliction in operation of that business after bankruptcy.

2. Phillips violated Sections 3664, 3667, and 3737 of the Public Utilities Code, and pursuant to Section 3800 of the Code should be fined in the amount of the undercharges, namely, \$22,000.10.

3. In addition, pursuant to Section 3774 of the Public Utilities Code, Phillips should be fined in the amount of \$750.

4. Phillips should be ordered to cease and desist from deviating from the rates, rules, and regulations published and in effect in the minimum rate tariffs or lawfully granted deviations thereto.

O R D E R

IT IS ORDERED that:

1. Russell T. Phillips (Phillips), dba Russ Phillips Trucking, shall pay to this Commission a fine of \$22,000.10 pursuant to Public Utilities Code Section 3800 and a fine of \$750 pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Phillips shall pay interest on the \$750 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. Phillips 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 Phillips and to cause service by mail of this order to be made upon Armour and Elk Grove. The effective date of this order shall be twenty days after completion of service.

Dated at San Francisco, California, this 18th
day of NOVEMBER, 1975.

[Signature]
President
William J. Quinn
Thomas L. Stinger
[Signature]
[Signature]
Commissioners