

Decision No. 85898

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 WARN BROS., INC., a California corporation, doing business as CRESCENT TRUCK LINES, AND NORMAN WILLIAMS CO., a California corporation.

Case No. 10033
(Filed January 13, 1976)

Armand Karp, for respondent.
James Squeri, Attorney at Law, and
Eugene Cahoon, for the Commission staff.

O P I N I O N

This is an investigation established on the Commission's own motion to determine whether or not Warn Bros., Inc., a California corporation doing business as Crescent Truck Lines (Crescent), violated Sections 453, 494, and 532 of the Public Utilities Code in charging and receiving less than the applicable rate on 76 specified shipments of alcoholic liquors which Crescent transported between June and September 1974 for Norman Williams Company (Williams), a California corporation, and whether Williams has paid less than the applicable rates for such transportation. A hearing was held on the case on March 11, 1976 before Examiner Pilling at San Francisco at which time and place Crescent and its representative appeared. The Commission's formal file shows that Williams was served with a copy of the Order Instituting Investigation and Notice of Hearing. Williams did not appear at the hearing.

Crescent and the Commission staff agreed to the facts concerning the 76 shipments transported for Williams. Those facts are that Crescent holds a highway common carrier certificate, a radial highway common carrier permit, and a highway contract carrier permit issued by this Commission; that Crescent is a party to

Western Motor Tariff Bureau Tariffs Nos. 100, 103, 109, 111, 113, 115, 116, and the distance table; that Crescent subscribes and has been served with Minimum Rate Tariffs 1-B, 2, 8, 9-B, 11-A, 15, 18, 19, and the Distance Table and Exception Ratings Tariffs; that Crescent owns and operates numerous pieces of trucking equipment; that Crescent's gross revenues for the year ending with the third quarter of 1975 was \$7,360,000 from intrastate transportation and \$197,000 from interstate transportation; that the subject 76 shipments were transported by Crescent; that the shipping documents obtained from Crescent by staff investigators, copies of which comprise Exhibit 3, are true and correct and cover the 76 shipments; that based on Exhibits 3 and 4 the issues raised by Ordering Paragraphs 1, 2, 3, 4, and 5 of the Order Instituting Investigation in Case No. 10033 be answered in the affirmative as to the 76 shipments; that the staff's ratings of the transportation documents in Exhibits 3 and 4 as set out in Exhibit 5 as amended by Exhibit 6 are true and correct; that the amount of undercharges from the ratings set out in Exhibits 5 and 6 are true and correct; that the amount of undercharges from the ratings in Exhibits 5 and 6 is \$13,928.61 and that this sum is to be collected from Williams pursuant to Ordering Paragraph 4 of the Order Instituting Investigation in Case No. 10033; and that Crescent should be assessed a fine in the amount of the undercharges of \$13,928.61 pursuant to Section 2100 of the Public Utilities Code and a fine of \$3,000 pursuant to Section 1070 of the Public Utilities Code.

The staff witness who conducted the actual investigation of Crescent testified that the officers and employees of Crescent cooperated fully with him during the investigation and in his opinion the undercharges did not occur because of a wilful intent on the part of Crescent or its officers or employees to render transportation at less than the lawful rates.

Another staff witness testified that the undercharges resulted from the following omissions or tariff misinterpretations on the part of Crescent: (1) charging hourly rates without the proper written contract as required by Western Motor Tariff Bureau Tariff No. 3; (2) applying rail rates to a point beyond Crescent's certificated authority where Crescent had entered into joint rates with another carrier for through service contrary to the provisions of Decision No. 82360; (3) misinterpretation of the stop-in-transit rule, Western Motor Tariff Bureau Tariff No. 109; (4) failure to bill Williams on 43 shipments; and (5) failure to assess correct rate and applicable switching charges. The resulting undercharges are, respectively, (1) \$1,457.43; (2) \$1,019.59; (3) \$1,192.54; (4) \$10,069.88; and (5) \$189.17.

Findings

The Commission adopts the stipulation of the staff, and Crescent as its findings of fact.

Conclusions

1. Respondent Crescent has violated Section 453 of the Public Utilities Code in extending preferences, privileges, and facilities to respondent Williams, and as a result has performed transportation services for less than the applicable rates and charges specified in its tariff schedules filed and in effect at the time of such transportation.

2. Respondent Crescent has violated Sections 494 and 532 of the Public Utilities Code by charging, demanding, collecting, or receiving a different compensation for the transportation of property other than the applicable rates and charges specified in its tariff schedules filed and in effect at the time of such transportation.

3. Respondent Williams has paid \$13,928.61 less than the applicable rates and charges for transportation performed by respondent Crescent.

4. Respondent Crescent should be ordered to collect from respondent Williams the difference between the charges billed or

collected and the charges due under applicable tariff schedules filed and in effect at the time such transportation was performed, which undercharges amount to \$13,928.61.

5. A fine in the amount of undercharges at \$13,928.61 should be imposed upon respondent Crescent pursuant to Section 2100 of the Public Utilities Code.

6. A fine in the amount of \$3,000 should be imposed on respondent Crescent pursuant to Section 1070 of the Public Utilities Code.

7. Respondent Crescent should be ordered to cease and desist from any and all unlawful operations and practices.

The Commission expects that Warn Bros., Inc. 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 Warn Bros., Inc., 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. Warn Bros., Inc. shall pay a fine of \$3,000 to this Commission pursuant to Public Utilities Code Section 1070 on or before the fortieth day after the effective date of this order; Warn Bros., Inc. 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. Warn Bros., Inc. shall pay a fine to this Commission pursuant to Public Utilities Code Section 2100 of \$13,928.61 on or before the fortieth day after the effective date of this order.

3. Warn Bros., Inc. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 4 and 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 3 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 Warn Bros., Inc.'s operating authority until the report is filed.

5. Warn Bros., 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 minimum rates and charges prescribed by this Commission.

The Executive Director of the Commission is directed to cause personal service of this order to be made upon respondent Warn Bros., Inc. and to cause service by mail of this order to be

made upon the other respondent. 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 11th
day of MAY, 1976.

William Synovitz President
Thomas L. Stinson
Robert Bateman Commissioners