

Decision No. 86053

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 MARK A. WOODS, a sole proprietorship; GEORGIA PACIFIC CORPORATION, a Georgia corporation; L & A JUICE CO., a California corporation; FORD WHOLESALE CO., INC. OF SAN JOSE, a California corporation; and FORD WHOLESALE CO., INC., a California corporation.

Case No. 10030
(Filed December 30, 1975)

Mark A. Woods, for himself, respondent.
James Squeri, Attorney at Law, and
Ed 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 Mark A. Woods (Woods), a sole proprietorship, for the purpose of determining whether Woods charged less than applicable minimum rates in connection with the transportation of paper in rolls for Georgia Pacific Corporation (Georgia), fruit juice for L & A Juice Co. (L&A), a corporation, and roofing material for Ford Wholesale Co., Inc. of San Jose (Ford San Jose) and Ford Wholesale Co., Inc. (Ford).

Public hearing was held in Fresno before Examiner Arthur M. Mooney on March 24, 1976, on which date the matter was submitted.

Woods operates pursuant to a radial highway common carrier permit. At the time of the staff investigation referred to hereinbelow, Woods had a terminal in Kingsburg; employed 14 drivers; had 10 tractors, 20 flatbed semitrailers, and 6 flatbed pull trailers;

and had received all applicable minimum rate tariffs, distance tables, and exception ratings tariffs. His gross operating revenue for the year 1974 was \$629,998 and for the year 1975 was \$762,880.

A representative of the Commission staff visited Woods's place of business and reviewed his records for the period October 1, 1973 to May 15, 1974. The representative testified that he requested all transportation records for the review period but was furnished with freight bills only; that he took the freight bills to his office and made true and correct photostatic copies of the documents relating to transportation performed for the four respondent shippers; and that the copies are all included in Exhibits 1, 2, and 3. He stated that Woods had informed him that he had not prepared master bills or received written instructions from the shippers for any of this transportation. The witness testified that he noted 18 instances in which freight bills prepared by Woods did not include all information required by Item 255 of Minimum Rate Tariff 2 (MRT 2). He asserted that when he returned the freight bills to the respondent carrier, he was informed by Woods that he knew undercharges would be found; that since we have a free enterprise economy, he could charge shippers any amount he pleased; and that this was no concern of the Commission. The representative stated that when he commenced his investigation he identified himself to Woods; that Woods gave him all the documents that were available; that he was informed by Woods that he was not hiding anything; and that Woods was cooperative.

The accountant and comptroller at Georgia's Santa Clara plant during the staff review period was subpoenaed as a witness by the staff to verify pickup dates of shipments transported by Woods from this location. The witness testified that he made true and correct photostatic copies of the company's dispatch records for

the months in issue; that they show the dates on which Woods picked up the shipments; and that the photostatic copies are all included in Exhibit 6. The yard manager of Ford's place of business in San Diego during the review period was also subpoenaed as a witness by the staff. This witness testified that although the freight bills relating to Ford in Parts 83, 84, 86, 87, 93, 94, 95, and 98 of Exhibit 3 each show San Bernardino as the destination, the shipments covered by these parts were in fact delivered to San Diego as evidenced by the signatures on the documents receipting for delivery of the freight, which in each instance was by one of his employees in San Diego.

The representative testified that he had personally observed the origins and/or destinations of certain of the shipments in issue and determined that they were not served by rail facilities and that this information is summarized in Exhibit 5. A rate expert of the Commission staff also testified that he had visited various other origins and/or destinations and likewise determined that they were not served by rail facilities and that this information is included in Exhibit 11.

The staff rate expert testified that he took the sets of documents in Exhibits 1, 2, and 3, together with the supplemental information testified to by the representative and the two subpoenaed witnesses and the data in Exhibits 5, 6, and 11, and formulated Exhibits 7 (Georgia), 8 (Ford), 9 (L&A), and 10 (Ford San Jose), which show the rates and charges assessed by the respondent carrier, the minimum rates and charges computed by the staff, and the alleged undercharges for the transportation in issue. He asserted that the rate errors in the four exhibits resulted from incorrect application of the multiple lot rule in Item 85 of MRT 2, failure to apply rail surcharges, failure to assess off-rail charges, failure to comply with documentation requirements for multiple lot and split

pickup shipments, failure to comply with the unit of measurement rule in MRT 2 by applying flat charges, showing incorrect destinations on freight bills, and one instance in which both split pickup and split delivery were accorded on the same transportation. The amount of undercharges shown in Exhibits 7 (Georgia), 8 (Ford), 9 (L&A), and 10 (Ford San Jose) is \$4,172.22, \$17,047.23, \$5,905.46, and \$10,176.34, respectively. The total of the undercharges shown in the four exhibits is \$37,301.25.

Woods testified as follows: He has operated his own business for eight years and has had 17 years experience in the trucking business. The freight bills for his company are made out by his drivers. He does not drive himself. He rates the freight bills himself. The staff review period was during the fuel shortage crisis, and because of this, he was unable at times to furnish sufficient trucks to pick up all of the freight in a particular shipment on the same day. In such instances, if he did not bill the transportation as a single shipment, the shipper would hire another carrier for future shipments. Since the staff investigation, he has lost the California Paperboard, the successor of Georgia, and the L&A accounts and is losing the Ford and Ford San Jose accounts. More than half of his business was generated from these four accounts, and their loss has severely hurt his financial position. With the rates he was charging, he was able to make a profit and stay in business. He does not feel that the Commission should set rates and was under the impression that all minimum rates were to be cancelled after the first of this year. The minimum rates are too high and are for the benefit of the large companies with substantial

overhead, which he does not have. The staff representative during his investigation went into his files and took what records he wanted.

The staff recommended that Woods be directed to collect the undercharges shown in its rate exhibits and pay a fine in the amount of the undercharges plus a punitive fine of \$3,000. Woods did not agree with any of the staff recommendations and pointed out that this was the first time he had been investigated by the staff or informed by it that there might be anything wrong with his rating practices.

We agree with the staff ratings and the undercharges shown in the four staff rate exhibits. With respect to Woods's statement regarding the setting of minimum rates by the Commission, Section 3662 of the Public Utilities Code provides that the Commission shall, upon complaint or upon its own initiative without complaint, establish or approve just, reasonable, and nondiscriminatory maximum or minimum or maximum and minimum rates to be charged by permit carriers. Pursuant to this section, the Commission has established statewide minimum rates for the transportation of general commodities, including those involved herein. With the exception of minor adjustments, the minimum rates adopted by the Commission are based on evidence which has been fully developed at public hearings at which all truckers, shippers, and interested parties, as well as the Commission staff, have had the opportunity to present their views. The question of whether the minimum rate

policy of the Commission should be continued, revised, or otherwise changed is now before it in Case No. 9963. In the absence of any change in this policy to the contrary, Woods is required to comply with all applicable minimum rates and regulations. This likewise applies to all other carriers subject to the minimum rates.

We concur with the staff that Woods should be directed to collect the undercharges found herein and to pay a fine in the amount of these undercharges. As to a punitive fine, we are of the opinion that such a fine in the amount of \$2,000 should be imposed on him. In arriving at the punitive fine, we have taken into account that this is the first time he has been before the Commission for rate violations and his assertion that his financial position has been substantially weakened because of the investigation herein. However, Woods is placed on notice that the Commission could have, pursuant to Section 3774 of the Public Utilities Code, imposed a punitive fine in the maximum amount of \$5,000 on him for the violations herein and that any further disregard of the Commission's established minimum rates will not be tolerated. Also, the four respondent shippers are each placed on notice that if it engages other carriers to transport its property at less than minimum rates, it may be subject to the penalties provided in the Public Utilities Code for such activity on its part.

Findings

1. Woods operates pursuant to a radial highway common carrier permit.
2. Woods was served with copies of all applicable minimum rate tariffs, distance tables, and exception ratings tariffs.
3. Woods did not include all information required to be shown on freight bills by Item 255 of MRT 2 in the 18 instances shown in Exhibit 3.

4. The minimum rates and undercharges computed by the staff for the transportation summarized in Exhibits 7 (Georgia), 8 (Ford), 9 (L&A), and 10 (Ford San Jose) are correct.

5. Woods charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 7 (Georgia), 8 (Ford), 9 (L&A), and 10 (Ford San Jose) in the amounts of \$4,172.22, \$17,047.23, \$5,905.46, and \$10,176.34, respectively, and the total amount of the undercharges in the four exhibits is \$37,301.25.

Conclusions

1. Woods violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.

2. Woods should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$37,301.25 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$2,000.

3. Woods should be directed to cease and desist from violating the minimum rates and rules established by the Commission.

The Commission expects that Mark A. Woods 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 Mark A. Woods 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 this proceeding for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Mark A. Woods shall pay a fine of \$2,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Mark A. Woods 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. Mark A. Woods shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$37,301.25 on or before the fortieth day after the effective date of this order.

3. Mark A. Woods shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 5 and shall notify the Commission in writing upon collection.

4. Mark A. Woods 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 carrier 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 Mark A. Woods's operating authority until the report is filed.

5. Mark A. Woods 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 shall cause personal service of this order to be made upon respondent Mark A. Woods and 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 7th day of July, 1976.

Jabstain
Leonard Ross

Commissioner

William J. Lyons
President
Robert B. Berlin
Commissioners