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Decision No. 86348

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 McANALLY TRANSPORTATION, INC., a California corporation; OH BOY! CORPORATION, a California corporation; POPPY FOOD COMPANY, a California corporation; ZACKY AND SONS POULTRY COMPANY, a California corporation; GOLDEN WHITE, INC., a California corporation; VERDA POULTRY COMPANY, a California corporation; and McANALLY ENTERPRISES, INC., a California corporation.

Case No. 9748

ORDER DENYING REHEARING

Decision No. 84196 dated March 18, 1975 directed McAnally Transportation, Inc. (McAnally), among other things, to collect \$10,201.79 in undercharges from Oh Boy! Corporation (Oh Boy) and to pay a fine in the amount of these undercharges to the Commission. By Decision No. 84534 dated June 10, 1975, as amended by Decision No. 84567 dated June 17, 1975, a petition for rehearing of Decision No. 84196 filed by Oh Boy was granted for the limited purpose of receiving further evidence with respect to whether McAnally had charged less than the applicable minimum rates in connection with the transportation performed by it for Oh Boy. Public hearing was held on September 22 and 23 and October 31, 1975, and the matter was submitted upon the filing of briefs on December 22, 1975.

On June 29, 1976, Decision No. 86021 was issued in which we found, on the basis of the record, that Oh Boy did not furnish McAnally the single consolidating documents required by paragraph 2 of Item 172 of Minimum Rate Tariff 2 (MRT-2). We ordered that

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the suspension of ordering paragraph 3 of Decision No. 84196 as it relates to Oh Boy be vacated, and directed McAnally to proceed with collection of the undercharges from Oh Boy.

On July 16, 1976, Oh Boy filed a petition for rehearing of Decision No. 86021. Oh Boy requests that the Commission set aside Decision No. 86021 and inter alia, reopen the proceeding on the basis of the recent decision by the U.S. Court of Appeals for the Ninth Circuit in Inland Cities Express v. Diamond National Corporation, 524 F.2d 753 (1975). Oh Boy alleges that it has in its possession tally sheets concerning the shipments in question which, under the Inland holding, would establish compliance with the single document rule contained in paragraph 2 of Item 172 of MRT-2. We note that the Court in Inland found compliance with the single document rule on the basis of a record showing that tally sheets had been received by the carrier's (Inland) agent at the shipper's (Diamond) loading dock, and that a master bill of lading consolidating the entire shipping transaction was issued as soon as the carrier's trailer (or trailers) had been loaded. In light of our previous finding that Oh Boy did not furnish McAnally with any single consolidating documents covering the shipments for which violations were found, based particularly on the evidence establishing that none of the master documents purportedly mailed by Oh Boy were received by McAnally, we are not persuaded that the holding in the Inland case requires a redetermination in the instant proceeding.


Having considered each and every allegation of Oh Boy's petition, and being of the opinion that good cause for rehearing of Decision No. 86021 and reopening of the record in Case No. 9748 has not been made to appear.

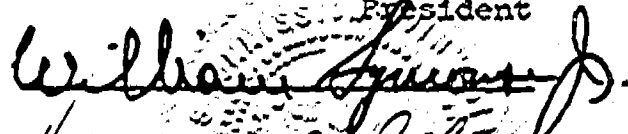

IT IS ORDERED that rehearing or other reconsideration of Decision No. 86021 is hereby denied.


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The effective date of this order is the date hereof.

Dated at San Francisco, California, this 31st day
of ~~AUGUST~~, 1976.



President







Commissioners