

Decision 84 05 033

MAY 2 1984

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 LVJ Leasing,)
Inc., a California corporation,)
and Calex Engineering, Inc., a)
California corporation.)

OII 82-03-01
(Order Reopening Investigation
dated February 1, 1984)

(See Decision 83-06-102 for appearances.)

Additional Appearance

Evelyn C. Lee, Attorney at Law, for the
Commission staff.

O P I N I O N

Background

By Decision (D.) 83-06-102 dated June 29, 1983 in this proceeding we found that LVJ Leasing, Inc. (LVJ), a dump truck carrier, had engaged subhaulers to transport earth for Calex Engineering, Inc. (Calex); had charged Calex less than the applicable rates named in Minimum Rate Tariff (MRT) 7-A for this transportation; and had paid subhaulers less than amounts required under MRT 7-A. As a consequence of these findings we ordered LVJ to:

1. Pay a fine of \$2,000 to the Commission on or before the 40th day after the effective date of the order.
2. Pay 7% annual interest on the fine commencing from the date of any delinquency.
3. Collect undercharges of at least \$1,600.64 from Calex.
4. Review subhaul payments in accordance with the Commission's adopted procedures and pay subhaulers any amounts due.
5. Notify the Commission in writing upon collection and payment.

6. File reports with the Commission of its compliance and attempts at compliance on a monthly basis commencing 60 days after the effective date of the order.
7. Cease and desist from violating the rates and rules of the Commission.

Records maintained by the Executive Director of the Commission show that personal service of D.83-06-102 was made on LVJ's president, James Fredieu on July 7, 1983. By letter dated September 13, 1983 our staff advised Fredieu of LVJ's failure to comply with the decision.

By D.84-02-043 dated February 1, 1984 this proceeding was reopened, LVJ's dump truck permit was suspended and LVJ was advised it could appear and show cause why its permit should not be cancelled or revoked for failure to comply with the terms and provisions of D.83-06-102.

Duly noticed public hearing on the reopened proceeding was held February 28, 1984 in San Francisco before Administrative Law Judge (ALJ) John Lemke, and the matter was submitted subject to the receipt of late filed Exhibits 7 and 8.

Evidence

Staff

Edward J. Iarossi, an Associate Transportation Representative in the Commission's Transportation Division, conducted the initial investigation of LVJ's operations during 1981 and participated in the case through this reopened proceeding. He testified that Fredieu was served with a copy of D.83-06-102 on July 7, 1983; that the fine of \$2,000 was due August 16, 1983; that Fredieu was notified on September 13 that the fine had not been paid; that after D.84-02-043 was issued on February 1, 1984 it was

served on Fredieu on February 7; and that Fredieu came to the Commission's El Monte office and paid the \$2,000 fine (Exhibit 1) on that day. Iarossi had calculated interest on the fine to be \$66.

Iarossi testified that LVJ had neither collected undercharges from Calnex nor paid subhaulers in accordance with D.83-06-102. Iarossi further testified that although D.84-02-043, which suspended LVJ's highway carrier permit, was served on LVJ on February 7, nevertheless LVJ continued to operate from that date to the time Iarossi visited LVJ's premises in La Puente on February 16. He stated that Fredieu explained that he had 56 subhaulers to worry about and to stop operating would have hurt those carriers.

LVJ

Fredieu testified that he has operated LVJ for eight years and is the sole shareholder in the corporation. He presented a copy of a check (Exhibit 4) in the amount of \$2,002.53 payable to this Commission dated August 15, 1983, and stated that when he issued this check he erroneously thought it was in payment of the fine assessed by D.83-06-102; whereas it was actually in payment of quarterly fees applicable to LVJ's operations conducted during the second quarter of 1983. Fredieu further stated that he had not understood how to pay the subhaulers he was ordered to compensate by D.83-06-102. That is, he did not understand the method to be used for calculating amounts payable to individual subhaulers involved in the transportation for Calnex.

In explaining the continued operations performed by LVJ after suspension of its permitted authority by D.84-02-043, Fredieu stated that when he was served with the decision on February 7 he contacted the Commission's Transportation Division in San Francisco. Based upon a telephone discussion with a member of the staff he assumed that it would be permissible to continue to operate as long as he was taking steps to pay the fine and collect the undercharges.

He stated that even as of the date of the hearing on February 28, 1984 LVJ was still operating, but that he was immediately shutting down operations as of that date based upon his clear understanding of D.84-02-043 as explained at the hearing.

Staff recommended, because of LVJ's continued operations after its highway carrier permit authority had been suspended, the bad faith evidenced in not collecting undercharges ordered by D.83-06-102, the failure to submit monthly reports concerning the status of its effort to collect the undercharges, and failure to pay subhaulers as ordered by the above decision, that an additional fine of \$1,000 should be imposed upon LVJ. Further, that if LVJ should fail to comply with the provisions of D.83-06-102 within 30 days after the effective date of this decision, its operating authority should be revoked without further order of the Commission.

Discussion

Staff furnished the ALJ on March 8 with evidence of payment of the \$66.00 interest on the original \$2,000 fine, and of collection from Calnex of undercharges of \$1,609.01 (Exhibit 8). Staff also advised the ALJ that LVJ had paid the subhaulers as directed by D.83-02-102.

LVJ is placed on notice that the Commission views with considerable alarm its lack of compliance with the provisions of D.83-06-102. It taxes our credulity to suggest that respondent, with eight years' experience in the transportation of commodities in dump truck equipment, could not correctly determine the amounts payable to the subhaulers engaged on the Calnex hauling; further, that it could not understand the plain wording contained in D.84-02-043 suspending its operating authority.

If LVJ, fails to comply with the Commission's rates, rules, regulations or orders, we will give serious consideration to permanently canceling the operating authority held by LVJ. Furthermore, we will impose a fine of \$1,000 upon LVJ for its failure to comply with the provisions of D.83-06-102 and D.84-02-043.

The dump truck permit held by LVJ, presently under suspension, will be lifted from suspension when payment of the fine of \$1,000 is received.

Findings of Fact

1. LVJ did not timely comply with the provisions of D.83-06-102.
2. By D.84-02-043 dated February 1, 1984, we suspended LVJ's permitted operating authority; copy of D.84-03-043 was personally served on LVJ's president on February 7, 1984.
3. LVJ continued operating after February 7, 1984.
4. LVJ has now complied with the provisions of D.83-06-102.
5. The staff recommended that a fine of \$1,000 be imposed upon LVJ for its failure to comply with the conditions of D.83-06-102 and D.84-02-043.

Conclusions of Law

1. LVJ should pay a fine of \$1,000 under Public Utilities Code § 3774 for failure to comply with the provisions of D.83-06-102 and D.84-02-043.
2. LVJ's permit should remain under suspension until receipt of the above fine.

O R D E R

IT IS ORDERED that:

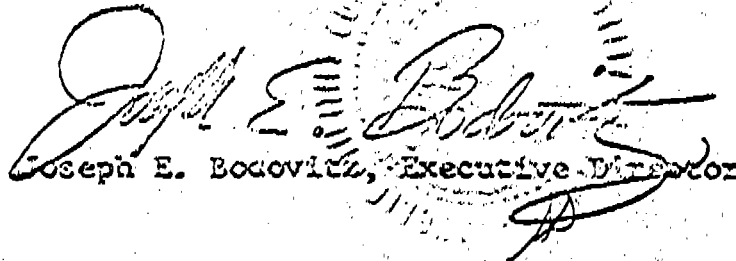
1. LVJ Leasing, Inc. (LVJ) shall pay a fine of \$1,000 to this Commission within 30 days of the effective date of this order.
2. LVJ's permit shall remain under suspension until receipt by the Commission of the above fine.
3. If LVJ fails to comply in the future with the Commission's rates, rules, regulations or orders, consideration shall be given to permanently canceling the operating authority held by LVJ.
4. If the fine of \$1,000 specified above is not received by the Commission within 30 days from today, LVJ's suspended permit shall be revoked without further order.

This order is effective today.

Dated May 2, 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitch, Executive Director

O R D E R

IT IS ORDERED that:

1. LVJ Leasing, Inc. (LVJ) shall pay a fine of \$1,000 to this Commission within 30 days of the effective date of this order.

2. LVJ's permit shall remain under suspension until receipt by the Commission of the above fine.

3. If LVJ fails to comply in the future with the Commission's rates, rules, regulations or orders, consideration shall be given to permanently canceling the operating authority held by LVJ.

4. If the fine ^{of \$1,000 above} specified in ~~Ordering Paragraph 1~~ is not received by the Commission within 30 days from today, LVJ's ^{permitted} permit shall be revoked without further order.

This order is effective today.

Dated MAY 2 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. CREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners