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Decision

July 5, 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation in the Commission's
own motion into the operations,
rates, and practices of Eagle
Transportation Company, Inc., a
California corporation; Berberian
Bros., Inc.; Ferrari Bros.
Distributing Co., Inc.; Geyser
Peak Winery; Mesa Distributing
Co., Inc. and Southern Wines
and Spirits of California, Inc.

OII 83-11-06
(Filed November 30, 1983)

Investigation on the Commission's
own motion into the operations,
rates and practices of Charles
Morrison, Inc., a California
Corporation; Southern Wine and
Spirits of California, Inc.; and
Wine Warehouse Imports, Inc.

OII 83-11-07
(Filed November 30, 1983)

David J. Marchant, Attorney at Law, for
Eagle Transportation Company, Inc. and
Charles O. Morrison, Inc., respondents.
Roger D. Creighton, for Wine Warehouse Imports,
Inc., respondent in OII 83-11-07.
Lee F. Hager, for Southern Wine and Spirits of
California, Inc., respondent in OII 83-11-06
and OII 83-11-07.
Patricia A. Bennett, Attorney at Law, and Will
Anderline, for the Commission staff.

O P I N I O N

This decision pertains to investigations instituted on the Commission's own motions into the operations, rates, charges, and practices of, respectively, Eagle Transportation Company, Inc. (Eagle) and Charles O. Morrison, Inc. (COM), which are commonly managed by Jerry Madeiros, an individual. The two cases are consolidated for hearing and decision by agreement of the parties in appearance at the hearing and at the direction of the assigned Administrative Law Judge. A consolidated hearing on the two cases was held in San Francisco on March 27, 1984.

As set out in the Ordering Paragraphs of OII 83-11-06 the Eagle investigation seeks to determine the following:

- "1. Whether respondent Eagle Transportation has violated Sections 3664 and 3667 of the Public Utilities Code by failing to charge and collect from the respondent shippers the applicable rates and charges.
- "2. Whether the respondent shippers have paid respondent Eagle Transportation less than the applicable rates and charges.
- "3. Whether respondent Eagle Transportation should be ordered to collect from the respondent shippers the difference between the charges actually received and the applicable rates and charges.
- "4. Whether a fine in the amount of any proven undercharges should be assessed against respondent Eagle Transportation pursuant to Section 3800 of the Public Utilities Code.
- "5. Whether respondent Eagle Transportation has violated Section 3737 of the Public Utilities Code by failing to file the written contracts as set forth in General Order 147, Rule 7 and Appendix A.
- "6. Whether respondent Eagle Transportation has violated Section 3706 by failing to produce records upon proper request by an authorized Commission employee.
- "7. Whether respondent Eagle Transportation has violated Section 5003.1 by failing to pay Transportation Rate Fund Fees.
- "8. Whether any or all of respondent Eagle Transportation's operating authority should be cancelled, revoked or suspended, or in the alternative, whether a fine should be imposed pursuant to Section 3774 of the Public Utilities Code.
- "9. Whether any other order(s) that may be appropriate should be issued in the lawful exercise of the Commission's jurisdiction."

Respondent shippers involved in the Eagle investigations are Berberian Bros., Inc. (Berberian), Ferrari Bros. Distributing Co., Inc. (Ferrari), Geyser Peak Winery (Geyser), Mesa Distributing Co., Inc. (Mesa), Wine Warehouse Imports, Inc. (Wine Warehouse), and Southern Wine & Spirits of California, Inc. (Southern Wine). Eagle's transportation for these five shippers took place between March and July 1982.

As set out in the Ordering Paragraphs of OII 83-11-07, the COM investigation seeks to determine the following:

- "1. Whether respondent Morrison, Inc. has violated Section 494 of the Public Utilities Code by failing to charge and collect from the respondent shippers the applicable rates.
- "2. Whether the respondent shippers have paid respondent Morrison, Inc. less than the applicable rates and charges.
- "3. Whether respondent Morrison, Inc. should be ordered to collect from the respondent shippers the difference between the charges actually received and the applicable rates and charges.
- "4. Whether a fine in the amount at any proven undercharges should be assessed against respondent Morrison, Inc. pursuant to Section 2100 of the Public Utilities Code.
- "5. Whether respondent Morrison, Inc. has violated Sections 486 and 702 of the Public Utilities Code by failing to file tariffs as set forth in General Order 147, Rule 6.
- "6. Whether respondent Morrison, Inc. has violated Section 5003.1 by failing to pay adequate Transportation Rate Fund Fees.
- "7. Whether any or all of respondent Morrison, Inc.'s operating authority should be cancelled, revoked or suspended, or in the alternative, whether a fine should be imposed pursuant to Section 1070 of the Public Utilities Code.
- "8. Whether any other order(s) that may be appropriate should be issued in the lawful exercise of the Commission's jurisdiction.

Respondent shippers involved in the COM investigation are Southern Wine and Wine Warehouse Imports, Inc. (Wine Warehouse). COM's transportation for these two shippers took place in July and August 1982.

The evidence shows that at all times pertinent Eagle had a contract carrier permit which was issued December 7, 1977. Eagle subscribed to Transition Tariff (TT) 2, Exception Ratings Tariff (ERT) 1, and Distance Table (DT) 8. It operated 10 tractors and 19 trailers and had a truck terminal at Santa Rosa at which it employed 12 persons. All trucking revenue reported by Eagle to the Commission for the years 1981 and 1982, a total of \$2,558,277, was reported as having been earned subhauling, on which no transportation tax is payable.

The evidence also shows that at all times pertinent COM had a highway common carrier certificate which was issued April 6, 1982. It operated two tractors and two trailers and operated out of Eagle's Santa Rosa terminal where it employed two drivers. All trucking revenue reported by COM to the Commission for the third and fourth quarter 1982, a total of \$376,492 was reported as having been earned by subhauling, on which no transportation tax is payable.

The Commission records show that COM had no tariffs on file with the Commission until September 10, 1982 at which time COM filed a notice with the Commission that it was adopting as its tariffs TT 2, ERT 1, and DT 8. Along with such notice it filed and was granted a "me too" of an existing rate reduction (RR 1100) establishing reduced rates on a level with those COM and Eagle had been charging on the shipments involved in these investigations.

Exhibits 5a and 5b contain, among other documents, copies of Eagle's freight bills evidencing prime carrier transportation of shipments hauled by Eagle for Mesa, Ferrari, Southern Wine, Geyser,

and Berberian between and including March and July 1982. Exhibits 6, 7, 8, 9, and 10 contain, respectively, for each such shipper (1) a summary of the billing information, including the billed charge, taken from each freight bill appearing in Exhibits 5a and 5b, (2) the higher correct TT 2 rates and charges which Eagle should have assessed for each of those shipments as determined by the Commission staff, and (3) the amount which Eagle undercharged on each shipment. A recapitulation of Exhibits 6 through 10 is as follows:

| <u>Shipper</u> | <u>No. of Shipments</u> | <u>Total Charges Billed</u> | <u>Total Correct Charges</u> | <u>Total Under-Charges</u> |
|----------------|-------------------------|-----------------------------|------------------------------|----------------------------|
| Mesa | 49 | \$32,630.26 | \$62,942.90 | \$30,312.64 |
| Ferrari | 19 | 9,930.69 | 14,376.56 | 5,045.87 |
| Southern Wine | 2 | 955.00 | 1,715.06 | 820.06 |
| Geyser | 47 | 12,063.54 | 23,557.69 | 11,494.15 |
| Berberian | 17 | 6,150.00 | 10,674.65 | <u>4,524.65</u> |
| | | Total undercharges | | <u>\$52,197.37</u> |

Exhibit 12 contains, among other documents, copies of COM's freight bills evidencing prime carrier transportation of shipments hauled by COM for Wine Warehouse and Southern Wine in July and August, 1982. Exhibits 13 and 14 contain, respectively, for each of the two such shippers, (1) a summary of the billing information, including the billed charge, taken from each freight bill appearing in Exhibit 12, (2) the higher correct TT 2 rates and charges which

COM should have assessed for each of those shipments as determined by the Commission staff, and (3) the amount which COM undercharged for each shipment. A recapitulation of Exhibits 13 and 14 is as follows:

| <u>Shipper</u> | <u>No. of Shipments</u> | <u>Total Charges Billed</u> | <u>Total Correct Charges</u> | <u>Total Under-Charges</u> |
|----------------|-------------------------|-----------------------------|------------------------------|----------------------------|
| Wine Warehouse | 23 | \$7,326.56 | \$22,026.27 | \$14,698.71 |
| Southern Wine | 9 | 4,795.00 | 7,605.71 | <u>2,810.71</u> |
| | | Total Undercharges | | \$17,509.42 |

At the hearing the Commission staff and Eagle entered into the following written stipulation:

"Respondent, Eagle Transportation Company, Inc. (Eagle) and the staff of the California Public Utilities Commission (Staff) hereby stipulate to the following:

- "1. That Exhibit 4, the carrier profile of Eagle, is true and correct.
- "2. That on various dates in 1982 the Staff conducted an investigation into the operations, rates and practices of Eagle for the time period March through July, 1982.
- "3. That said investigation disclosed to the satisfaction of Staff, for the relevant time period, Eagle's violations of Sections 3664, 3667, 3706, 3737 and 5003.1 of the Public Utilities Code.
- "4. That the investigation resulted in the issuance of OII 83-11-06 by the California Public Utilities Commission on November 30, 1983.

- "5. That the copies of the documents provided by Eagle to the Staff relative to the subject transportation enumerated in OII 83-11-06, Exhibits 5a, and 5b, are true and correct.
- "6. That Staff asserts that Exhibits 6 through 10, the Staff rate statements for the five respondent shippers reflecting undercharges, are true and correct and that Eagle does not contest the truth and correctness of said exhibits.
- "7. That Staff asserts that Exhibits 4 through 10 constitute the basis for a decision and order in OII 83-11-06 and that Eagle does not contest such assertion.
- "8. That Staff asserts that ordering paragraphs 1, 2, 3, 4, 5, 6, and 7 of OII 83-11-06 should be answered in the affirmative and that Eagle does not contest said assertion.
- "9. That, in accordance with ordering paragraph 3 of OII 83-11-06, Staff asserts that respondent Eagle should be ordered to collect the charges shown in Exhibit 6 through 10 from respondent shippers, such amounts being payable to the Commission as the applicable fine assessed against respondent Eagle pursuant to Section 3800 of the Public Utilities Code and that Eagle does not contest such assertion and agrees to pay a fine equal to the undercharges. In the event that Eagle is unable to collect such undercharges, Eagle reserves the right to request relief from the requirement to pay the fine referred to above.
- "10. That, in accordance with ordering paragraph 7 of OII 83-11-06, Staff asserts that within 30 days from the effective date of any Commission order, respondent Eagle shall prepare and file amended returns for Transportation Rate Fund Fees for the years 1981 and 1982, and that Eagle does not contest such assertion and will prepare and file amended returns for those years.

- "11. That Staff asserts that because of the volume of rate violations, Eagle should be ordered to pay a punitive fine of \$3,000 pursuant to Section 3774 of the Public Utilities Code, and that Eagle does not contest this assertion and agrees to pay a punitive fine of \$3,000.
- "12. That Eagle's agreement not to contest the above-mentioned assertions of the Staff is expressly conditioned upon the Commission's acceptance of the Staff's and Eagle's agreement to limit the punitive fine to not more than \$3,000."

Also, at the hearing the Commission staff and COM entered into the following written stipulation:

"Respondent, Charles O. Morrison, Inc. (Morrison) and the staff of the California Public Utilities Commission (Staff) hereby stipulate to the following:

- "1. That Exhibit 11, and the carrier profile of Morrison is true and correct.
- "2. That on various dates in 1982 the Staff conducted an investigation into the operations, rates and practices of Morrison for the time period June through August, 1982.
- "3. That said investigation disclosed to the satisfaction of Staff, for the relevant time period, Morrison's violations of Section 486, 494, 702 and 5003.1 of the Public Utilities Code.
- "4. That the investigation resulted in the issuance of OII 83-11-07 by the California Public Utilities Commission on November 30, 1983.
- "5. That the copies of the documents provided by Morrison to the Staff relative to the subject transportation enumerated in OII 83-11-07, Exhibit 12, are true and correct.
- "6. That Staff asserts that Exhibits 13 and 14, the Staff rate statements for the two respondent shippers reflecting undercharges, are determined by Staff to be true and correct and that Morrison does not contest the truth and correctness of said exhibits.

- "7. That Staff asserts that Exhibits 11 through 14 constitute the basis for a decision and order in OII 83-11-07 and that Morrison does not contest such assertion.
- "8. That Staff asserts that ordering paragraphs 1, 2, 3, 4, 5 and 6 of OII 83-11-07 should be answered in the affirmative and that Morrison does not contest said assertion.
- "9. That, in accordance with ordering paragraph 3 of OII 83-11-07, Staff asserts that respondent Morrison should be ordered to collect the charges shown in Exhibits 13 and 14 from respondent shippers, such amounts being payable to the Commission as the applicable fine assessed against respondent Morrison pursuant to Section 2100 of the Public Utilities Code and that Morrison does not contest such assertion and agrees to pay a fine equal to the undercharges. In the event that Morrison is unable to collect such undercharges, Morrison reserves the right to request relief from the requirement to pay the fine referred to above.
- "10. That, in accordance with ordering paragraph 6 of OII 83-11-07, Staff asserts that within 30 days from the effective date of any Commission order, respondent Morrison shall prepare and file amended returns for Transportation Rate Fund Fees for the last two quarters of 1982, and that Morrison does not contest such assertion and will prepare and file amended returns for the last two quarters of 1982.

- "11. That Staff asserts that because of the volume of rate violations, Morrison should be ordered to pay a punitive fine of \$2,000 pursuant to Section 1070 of the Public Utilities Code, and that Morrison does not contest this assertion and agrees to pay a punitive fine of \$2,000.
- "12. That Morrison's agreement not to contest the above-mentioned assertions of the Staff is expressly conditioned upon the Commission's acceptance of the Staff's and Morrison's agreement to limit the punitive fine to not more than \$2,000."

A representative of Wine Warehouse, a respondent shipper in the COM case, and a representative of Southern Wine, a respondent shipper in both the Eagle and COM cases, appeared at the hearing and gave testimony on behalf of their respective companies. They contend that it would be unjust to their companies to require them to pay the undercharges assigned by the Commission staff to their companies. They introduced into evidence a series of written communications from COM and Eagle to their respective companies going back as far as April 1982, in which their companies were given assurances that the lower rates later charged them and here under investigation were COM's and Eagle's lawful rates. To substantiate these assurances COM and Eagle sent along copies of a purported COM Tariff Adoption Notice, with a stated effective date of June 1, 1982, which ostensibly adopted, with exceptions, TT 2. The exceptions named those lower rates. Neither the Adoption Notice, which was on a form seemingly furnished by the Commission, nor the attached sheet setting forth the exceptions had any indications on them that they had been filed with the Commission. The representatives of Wine Warehouse and Southern Wine¹ stated that had their companies known those lower rates were not COM's/Eagle's lawful rates their companies would not have used COM/Eagle but would have used the carrier whose rates

¹ The representative of Southern Wine stated though his company had been presented with a written contract to cover the two hauls made for Southern Wine involved in the Eagle Case his company had never signed it.

COM later used to justify COM's September 10, 1982 "me-too" rate reduction filing. Hence, neither Wine Warehouse nor Southern Wine profited from using COM or Eagle to the exclusion of carriers which were required to charge the higher TT 2 rates since those shippers would have used the other carrier whose lawful rates were the same as those charged them by COM or Eagle.

Wine Warehouse and Southern Wine argue that the reasons it would be unjust to require them to pay the undercharges are that their company's dealings with COM and/or Eagle were at arm's length, that there was no shipper collusion or financial gain, that there was no shipper knowledge that either of the carrier's rates were not properly filed with the Commission, and that there were constant assurances by COM and Eagle that the reduced rates were lawfully on file with the Commission. They claim the situation their companies found themselves in is similar to the situation in which shippers found themselves in Investigation of S. J. Steel Transportation, Inc. et al. (1976) 81 CPUC 26. In that case the Commission, for the same reasons advanced here by Wine Warehouse and Southern Wine, determined that it would be unjust to require the shippers to pay undercharges.

S. J. Steel Transportation, Inc. involved a trucker who possessed a certificate as well as a permit, the permit being restricted against the transportation of property when such transportation was covered by its certificate. The Commission found the trucker had used an alter ego permit carrier (a permit carrier under common management with the trucker) to perform transportation covered by the trucker's certificate. The alter ego carrier had charged the involved shippers the minimum rates, which were less than the trucker's higher tariff rates. The Commission held (81 CPUC 26, at page 43) that because of the alter ego relationship between the trucker and its alter ego permit carrier any transportation performed by the alter ego was within the area covered by the trucker's certificated authority and was subject to the rates provided in the trucker's applicable tariff. The Commission then went on to say:

"As pointed out by the witnesses for Bethlehem and San Jose Steel, their dealings with SFST [the alter ego permit carrier] were at arm's length, they had no knowledge of any possible alter ego relationship between the two carriers, they could have obtained the same rates assessed by SFST from any other permitted carrier, and, for this reason they obtained no economic benefit by using SFST. Although Flintkote and Kaiser did not make appearances, it can reasonably be presumed that their positions would be the same as that expressed by Bethlehem and San Jose Steel had they appeared. Where special circumstances have been shown to exist and to avoid inequitable and unjust results, the Commission may, pursuant to Section 494 of the Public Utilities Code, dispense with the requirement that undercharges be collected."

The Commission staff disagrees with Wine Warehouse and Southern Wine. The staff contends that the equitable relief which the two shippers seek has been granted only in alter ego cases, where the relief is based on the intentionally hidden nature of the violations. In such cases a shipper is not charged with knowledge of noncompliance with Commission regulations, whereas in this proceeding there was a failure of a carrier to file its contracts and tariffs. The staff points out that should a shipper believe that undercharges are due to its reliance on actionable inaccurate or incorrect statements by a carrier, the proper procedure is to seek damages in civil court.

Eagle and COM request that if any punitive fines are levied upon them that, because they are small carriers, they be given the alternative of paying said fines in five equal installments, the first installment to be due within 30 days from the effective date of the order and the subsequent installments being due at ensuing 30-day intervals. The staff opposes this method of payment as no inescapable financial hardship, such as bankruptcy, exists. However, the staff is willing to agree that payment of these fines may be consecutive, meaning \$2,000 would be payable within 30 days of the effective date of the order and \$3,000 within 60-days of the same date.

Discussion

We must deny the request of Wine Warehouse and Southern Wine that the Commission not order COM and Eagle to collect the undercharges found to be outstanding against them. Their situation, simply, is that they relied to their detriment on the rate misrepresentation made to them by COM and Eagle when they could have ascertained from the Commission's public records the truth or falsity of such misrepresentations. While it is true that Public Utilities Code Section 494 authorizes us to dispense with the requirement that undercharges be collected to avoid inequitable and unjust results where special circumstances have been shown to exist, we do not consider the reliance by a shipper on a carrier's misrepresentation, whether purposeful or not, of its rates to be a special circumstance excusing the shipper from paying the carrier's lawful rate. If we held otherwise, such misrepresentation would defeat rate regulation and open the door for carriers to unjustly discriminate between shippers and to charge and collect unreasonably low rates.

S. J. Transportation, Inc. relied on by Wine Warehouse and Southern Wine to excuse them from paying the undercharges, involved hidden violations by the carrier, which were unascertainable by the shipper, whereas in the case at hand COM's and Eagle's rates, or the lack of such rates, were a matter of public record from which Wine Warehouse and Southern Wine could determine the truth or falsity of COM's or Eagle's rate representation.

Findings of Fact

1. Eagle possessed a contract carrier permit which was issued to it December 7, 1977.
2. Eagle subscribed to TT 2, ERT 1, and DT 8.
3. Exhibits 5a and 5b are copies of Eagle's freight bills covering transportation performed by Eagle as prime carrier between and including March and July, 1982 for Mesa, Ferrari, Southern Wine, Geyser, and Berberian.

4. The transportation set out in Finding 3 was performed by Eagle without a written contract with the involved shippers and without Eagle having filed any written contracts with the Commission.

5. In performing the transportation set out in Findings 3 and 4 Eagle undercharged each of the involved shippers in the amount of undercharges set out, respectively, in Exhibits 6, 7, 8, 9, and 10.

6. In receiving transportation from Eagle as set out in Findings 3 and 4, those shippers named in Finding 3 paid less than the applicable rates and charges to Eagle accordingly as set out as undercharges in Exhibits 6, 7, 8, 9, and 10.

7. Eagle failed to pay any Transportation Rate Fund Fees in connection with the transportation set out in Finding 3.

8. Eagle failed to produce records upon proper request by an authorized Commission employee.

9. COM possessed a highway common carrier certificate which was issued to it April 6, 1982.

10. COM had no tariffs on file with the Commission until September 10, 1982.

11. Exhibit 12 contains copies of COM freight bills covering transportation performed by COM as prime carrier during July and August, 1982 for Wine Warehouse and Southern Wine.

12. In performing the transportation set out in Finding 10 COM undercharged each of the involved shippers in the amount of the undercharges set out, respectively, in Exhibits 13 and 14.

13. In receiving transportation from COM as set out in Findings 11 and 12, those shippers named in Finding 11 paid less than the applicable rates and charges to COM accordingly as set out as undercharges in Exhibits 13 and 14.

14. COM failed to pay any Transportation Rate Fund Fees in connection with the transportation set out in Finding 11.

Conclusions of Law

1. Ordering Paragraphs 1, 2, 3, 4, 5, 6, 7, in OII 83-11-06 should each be decided in the affirmative.

2. A fine of \$3,000, imposed pursuant to Public Utilities Code Section 3774, is reasonable and should be levied on Eagle.

3. Eagle should be ordered to prepare and file amended returns for Transportation Rate Fund fees for the years 1981 and 1982.

4. Eagle should be ordered not to perform any transportation under its contract carrier permit unless it has complied with Rule 7 of General Order 147.

5. Ordering Paragraphs 1, 2, 3, 4, 5, and 6 in OII 83-11-07 should each be decided in the affirmative.

6. A fine of \$2,000, imposed pursuant to Public Utilities Code Section 1070, is reasonable and should be levied on COM.

7. COM should be ordered to prepare and file amended returns for Transportation Rate Fund fees for the years 1981 and 1982.

8. COM should be ordered not to charge or collect less than its applicable tariff rates and charges on file with the Commission.

9. If a shipper believes that its payment of undercharges was due to its reliance on actionable misstatements by a carrier the proper procedure for that shipper to follow is to seek damages in civil court.

Respondent carriers should promptly take all reasonable actions to collect the undercharges; if necessary, they should file timely complaints according to, respectively, Public Utilities Code Sections 737 or 3671. The Commission staff will investigate respondents' compliance. If it believes that respondent carriers or their attorneys have not acted in good faith, the Commission will reopen this proceeding to determine whether to impose sanctions.

O R D E R

IT IS ORDERED that:

1. Eagle Transportation Company, Inc. shall:
 - a. Pay a fine of \$3,000 to this Commission under PU Code Section 3774 on or before the 60th day after the effective date of this order.
 - b. Pay 7% annual interest on the fine, beginning when the payment is delinquent.
 - c. Pay a fine to the Commission under PU Code Section 3800 of \$52,197.37 on or before the 40th day after the effective date of this order. ✓
 - d. Take such action, as may be necessary, to collect the undercharges set forth in Finding 5, including timely legal action under PU Code Section 3671.
 - e. Notify the Commission in writing upon collection.
 - f. Promptly take all reasonable steps to collect the undercharges.
 - g. File with the Commission on the first Monday of each month a report of any undercharges remaining uncollected 60 days after the effective date of this order, specifying the action taken to collect them and the result of such action, until they have been collected in full or until further order of this Commission. Failure to file any such monthly report within 15 days after the due date shall result in the automatic suspension of the operating authority until the report is filed.
 - h. Prepare and file amended returns for Transportation Rate Fund fees for the years 1981 and 1982.
 - i. Perform no transportation under its contract carrier permit unless it has complied with Rule 7 or General Order 147.

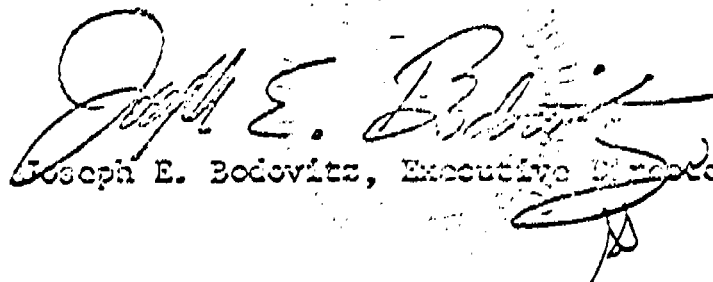
2. Charles Morrison, Inc. shall:

- a. Pay a fine of \$2,000 to this Commission under PU Code Section 1070 on or before the 30th day after the effective date of this order.
- b. Pay 7% annual interest on the fine, beginning when the payment is delinquent.
- c. Pay a fine to this Commission under PUC Code Section 2100 of \$17,509.42 on or before the 40th day after the effective date of this order.
- d. Take such action, as may be necessary, to collect the undercharges set forth in Finding 12, including timely legal action under PU Code Section 737.
- e. Notify the Commission in writing upon collection.
- f. Promptly take all reasonable steps to collect the undercharges.
- g. File with the Commission on the first Monday of each month a report of any undercharges remaining uncollected 60 days after the effective date of this order, specifying the action taken to collect them and the result of such action, until they have been collected in full or until further order of the Commission. Failure to file any such monthly report within 15 days after the due date shall result in the automatic suspension of the operating authority until the report is filed.
- h. Prepare and file amended returns for Transportation Rate Fund fees for the years 1981 and 1982.

- i. Perform no transportation under its highway common carrier certificate at less than its applicable tariff rates and charges on file with the Commission. ✓
3. The Executive Director shall have this order personally served on respondents Eagle Transportation Company, Inc. and Charles Morrison, Inc. and served by mail on all other respondents.
4. This decision finds undercharges and imposes fines. It denies relief to two shippers claiming carrier misrepresentation. This order becomes effective 30 days from today.
Dated July 5, 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. Bodovitz, Executive Director

Decision 84 G7 091

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O P I N I O N

This decision pertains to investigations instituted on the Commission's own motions into the operations, rates, charges, and practices of, respectively, Eagle Transportation Company, Inc. (Eagle) and Charles O. Morrison, Inc. (COM), which are commonly managed by Jerry Madeiros, an individual. The two cases are consolidated for hearing and decision by agreement of the parties in appearance at the hearing and at the direction of the assigned Administrative Law Judge. A consolidated hearing on the two cases was held in San Francisco on March 27, 1984.

Discussion

We must deny the request of Wine Warehouse and Southern Wine that the Commission not order COM and Eagle to collect the undercharges found to be outstanding against them. Their situation, simply, is that they relied to their detriment on the rate misrepresentation made to them by COM and Eagle when they could have ascertained from the Commission's public records the truth or falsity of such misrepresentations. While it is true that Public Utilities Code Section 494 authorizes us to dispense with the requirement that undercharges be collected to avoid inequitable and unjust results where special circumstances have been shown to exist, we do not consider the reliance by a shipper on a carrier's misrepresentation, whether purposeful or not, of its rates to be a special circumstance excusing the shipper from paying the carrier's lawful rate. If we held otherwise, such misrepresentation would defeat rate regulation and open the door for carriers to unjustly discriminate between shippers and to charge and collect unreasonably low rates.

S. J. Transportation, Inc. relied on by Wine Warehouse and Southern Wine to excuse them from paying the undercharges, involved hidden violations by the carrier, which were unascertainable by the shipper, whereas in the case at hand COM's and Eagle's rates, or the lack of such rates, were a matter of public record from which Wine Warehouse and Southern Wine could determine the truth or falsity of COM's or Eagle's rate representation.

Findings of Fact

1. Eagle possessed a contract carrier permit which was issued to it December 7, 1977.
2. Eagle subscribed to TT 2, ERT 1, and DT 8.
3. Exhibits 5a and 5b are copies of Eagle's freight bills covering transportation performed by Eagle as prime carrier between and including March and July, 1982 for Mesa, Ferrari, Southern Wine, Geyser, and Berberian.

O R D E R

IT IS ORDERED that:

1. Eagle Transportation Company, Inc. shall:
 - a. Pay a fine of \$3,000 to this Commission under PU Code Section 3774 on or before the 60th day after the effective date of this order.
 - b. Pay 7% annual interest on the fine, beginning when the payment is delinquent.
 - c. Pay a fine to the Commission under PU Code Section 3800 of \$52,197.37 on 40th day after the effective date of this order.
 - d. Take such action, as may be necessary, to collect the undercharges set forth in Finding 5, including timely legal action under PU Code Section 3671.
 - e. Notify the Commission in writing upon collection.
 - f. Promptly take all reasonable steps to collect the undercharges.
 - g. File with the Commission on the first Monday of each month a report of any undercharges remaining uncollected 60 days after the effective date of this order, specifying the action taken to collect them and the result of such action, until they have been collected in full or until further order of this Commission. Failure to file any such monthly report within 15 days after the due date shall result in the automatic suspension of the operating authority until the report is filed.
 - h. Prepare and file amended returns for Transportation Rate Fund fees for the years 1981 and 1982.
 - i. Perform no transportation under its contract carrier permit unless it has complied with Rule 7 or General Order 147.

1. Perform no transportation under its highway common carrier certificate at less than its applicable tariff rates and charges on file with the Commission

3. The Executive Director shall have this order personally served on respondents Eagle Transportation Company, Inc. and Charles Morrison, Inc. and served by mail on all other respondents.

4. This decision finds undercharges and imposes fines. It denies relief to two shippers claiming carrier misrepresentation.

This order becomes effective 30 days from today.

Dated JUL 5 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

PRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners