

Decision 84 08 067 AUG 1 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Investigation on the Commission's own motion into the operations, rates, and practices of Tony A. Lomanto individually and dba Tony A. Lomanto Trucking, and Monterey Fish Company, a California corporation,

OII 84-01-01
(Filed January 19, 1984)

Respondents.

Patrick L. Gileau, Attorney at Law, and
Will Anderline, 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 Tony A. Lomanto (Lomanto), doing business as Tony A. Lomanto Trucking, and Monterey Fish Company (Fish Company).

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis in San Francisco on April 10, 1984, and the matter was submitted on that date.

At the hearing, counsel for the Commission staff presented a stipulation between the staff and Lomanto, which was received in evidence. The staff also introduced other evidence relating to the matter.

The Commission makes the following findings and conclusions.

Findings of Fact

1. Lomanto holds the following operating authority issued by the Commission: Highway Common Carrier Certificate, Highway

Contract Carrier Permit, Dump Truck Carrier Permit, Livestock Carrier Permit, Agricultural Carrier Permit, Heavy Specialized Carrier Permit, and Tank Truck Carrier Permit.

2. The following Minimum Rate Tariffs (MRT) were served upon Lomanto: TT-2, MRTs 3, 7, 14, 20; Directory 2, Exception Ratings 1, and Distance Table 8.

3. From January 2, 1982 through February 26, 1982, Lomanto transported 28 shipments for Fish Company between Pier 45, San Francisco and Sand City. These shipments were not properly rated in accordance with TT-2, which was applicable at the time of transportation. Twenty-one shipments resulted in undercharges of \$2,513.95. Seven shipments resulted in overcharges of \$882.09. The shipments are set forth in Table 1, which contains the amounts charged by Lomanto and the correct charges which should have been assessed.

4. Since the order is based upon stipulation of Lomanto and the staff, it should be effective on the date of service.

Conclusions of Law

1. The transportation at less than the applicable rate in TT-2, set forth in Finding 3, violated §§ 3664 and 3667 of the Public Utilities (PU) Code.

2. Lomanto should be ordered to collect the net undercharges of \$1,631.86 as indicated in Finding 3.

TABLE 1

Page 1

T-43,223

TONY A. LOMANTO

COMMODITY : Fish, Fresh, MOI
 CONSIGNOR AND DEBTOR : Monterey Fish Company, Inc.
 ORIGIN : Pier 45 Municipal Pier, San Francisco, CA HZ 101
 DESTINATION : Monterey Fish Company, Inc., Sand City, CA

TARIFF RATE AND CHARGE

PART NO.	P/B #	DATE	WEIGHT	CARRIER RATE IN CENTS PER CWT	CARRIER'S CHARGE	RATE (1)	CHARGE (2)	2% S/C (3) S/C	CENTRAL COASTAL S/O	CHARGE	U/O	O/O
									(4)			
1	33977	1-22-82	47,846	139	\$ 665.05	110	\$ 526.31	\$ 152.63	\$ 5.70	\$ 684.64	\$ 19.59	
2	33203	1-25-82	39,821	"	"	"	"	"	"	"	"	"
			as 40,000	"	556.00	"	438.03	127.03	5.70	570.76	14.76	
3	33204	2-25-82	40,913	"	568.69	"	450.04	130.51	5.70	586.25	17.56	
4	33205	2-26-82	45,034	"	626.66	"	495.92	143.82	5.70	645.44	18.78	
5	33206	1-27-82	43,551	"	605.35	"	479.06	138.93	5.70	623.69	18.34	
6	33207	1-27-82	44,300	"	615.88	"	487.39	141.34	5.70	634.43	18.55	
7	33208	1-27-82	45,700	"	635.23	"	502.70	145.78	5.70	654.18	18.95	
8	33979	1-27-82	47,739	"	663.57	"	525.13	152.29	5.70	683.12	19.55	
9	33210	1-28-82	48,706	"	677.01	"	535.77	155.37	5.70	696.84	19.83	
10	33211	1-29-82	44,142	"	613.57	"	485.56	140.81	5.70	632.07	18.50	
11	33212	1-29-82	45,326	"	630.03	"	498.59	144.59	5.70	648.88	18.85	
12	33214	1-29-82	33,174	"	"	"	"	"	"	"	"	"
			as 40,000	"	556.00	"	364.91	105.82	5.70	476.43		\$ 79.57
13	33209	1-28-82	46,367	"	644.50	"	510.04	147.91	5.70	663.65	19.15	
14	33980	1-28-82	43,696	"	607.39	"	480.66	139.39	5.70	625.75	18.37	
15	33213	1-29-82	35,295	"	"	"	"	"	"	"	"	"
			as 40,000	"	556.00	"	388.25	112.59	5.70	506.54		49.46
16	33219	2-02-82	44,178	"	614.07	"	485.96	140.93	5.70	632.59	18.52	
17	33216	2-01-82	33,648	"	"	"	"	"	"	"	"	"
			as 40,000	"	556.00	"	370.13	107.34	5.70	483.17		72.83
18	33982	2-01-82	43,651	"	606.74	"	480.16	139.25	5.70	625.11	18.37	
19	33217	2-02-82	44,686	"	621.13	"	491.55	142.55	5.70	639.80	18.67	
20	33218	2-02-82	44,800	"	622.72	"	492.00	142.91	5.70	641.41	18.69	
21	33220	2-02-82	25,033	"	"	"	"	"	"	"	"	"
			as 40,000	"	556.00	"	275.36	79.05	5.70	360.91		195.09
22	33221	2-03-82	46,413	"	645.14	"	510.54	148.06	5.70	664.30	19.16	
23	46927	2-05-82	17,360	"	"	"	"	"	"	"	"	"
			as 40,000	"	556.00	"	264.00	76.56	5.70	346.26		209.74

OII 84-01-01 ALJ/ec

TABLE 1

T-43,293

TONY A. LOMANTO

COMMODITY : Fish, Fresh, NOI
 CONSIGNOR AND DESTOR : Monterey Fish Company, Inc.
 ORIGIN : Pier 45 Municipal Pier, San Francisco, CA MZ 101
 DESTINATION : Monterey Fish Company, Inc., Sand City, CA

TARIFF RATE AND CHARGE

PART NO.	P/B #	DATE	WEIGHT	CARRIER RATE IN CENTS PER CWT	CARRIER'S CHARGE	RATE (1)	CHARGE (2)	2% S/C (3) S/C	CENTRAL COASTAL S/C	CHARGE	U/C	O/C	
									(4)				
24	33988	2-08-82	27,613										
			as 40,000	139	\$ 556.00	110	\$ 303.74	\$ 88.08	\$ 5.70	\$ 397.52		\$ 158.48	
25	33989	2-10-82	49,345	"	685.89	"	542.80	157.41	5.70	705.91	\$ 20.02		
26	33990	2-12-82	30,541										
			as 40,000	"	556.00	"	335.95	97.43	5.70	439.08		116.92	
27	33223	2-15-82	44,825	"	623.06	"	493.08	142.99	5.70	641.77	18.71		
28	46928	2-15-82	44,657	"	620.73	"	491.23	142.46	5.70	639.39	18.66		
February 11, 1982											Letter and Statement		
												<u>2,122.37</u>	
										Total	\$ 2,513.95	\$ 882.09	

General Note: TT 2 = Commission's Transition Tariff No. 2.

- Footnotes: (1) Rate for 116 constructive miles, per Item 506, TT-2, based on Class 50 rating, per Item 69770, NCF 100.
 (2) Charges based on actual weight, except Part 23 which is subject to a minimum weight of 24,000 pounds.
 (3) Surcharge from Suppl. 154, TT-2.
 (4) Surcharge from Suppl. 139, TT-2.

3. Pursuant to PU Code § 3800 a fine equal to the undercharges of \$1,631.86 should be imposed on Lomanto.

4. Pursuant to PU Code 3774, as an alternative to the cancellation, revocation, or suspension of any of Lomanto's operating authorities, a fine of \$5,000 should be imposed on Lomanto. Lomanto should have the option of paying the \$5,000 fine in a lump sum within 30 days of the effective date of this order or in five equal installments, the first installment due within 30 days of the effective date of this order with subsequent installments due every 30 days thereafter until the amount is paid in full.

Respondent should promptly take all reasonable actions to collect the undercharges. If necessary he should file timely complaints according to PU Code § 3671. The Commission staff will investigate respondent's compliance. If it believes that Tony A. Lomanto or his attorney has 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 Tony A. Lomanto shall:

1. Pay a fine of \$5,000 to this Commission under PU Code § 3774. Lomanto shall have the option of paying the fine in a lump sum within 30 days of the effective date of this order or in five equal installments, the first installment due within 30 days of the effective date of this order with subsequent installments due every 30 days thereafter until the amount is paid in full.
2. Pay 7% annual interest on the fine, beginning when the payment is delinquent.

3. Pay a fine to this Commission under PU Code § 3800 of \$1,631.86 on or before the 40th day after the effective date of this order.
4. Take such action, as may be necessary to collect the undercharges set forth in Finding 3, including timely legal action under PU Code § 3671.
5. Notify the Commission in writing upon collection of the undercharges.
6. 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.
7. Not charge or collect less than minimum rates set by the Commission.
8. The carrier is fined and this investigation is closed.

The Executive Director shall have this order personally served upon respondent Tony A. Lomanto and served by mail upon all other respondents.

The order shall become effective for each respondent on the date the order is served.

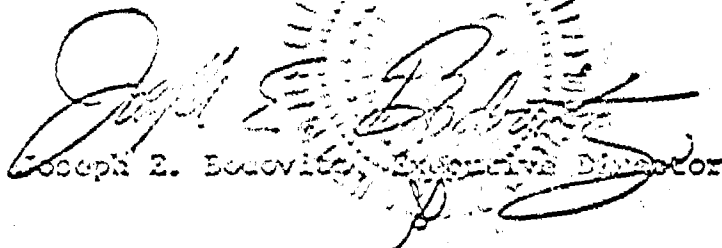
Dated AUG 1 1984 , at San Francisco, California.

Commissioner Priscilla C. Gray,
being necessarily absent, did
not participate

Commissioner William T. Bagley
being necessarily absent, did
not participate.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
Commissioners

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


Joseph E. Borovitz, Executive Director