

ORIGINAL TB-2

Decision 84 09 058

SEP 6 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Adams Delivery Service, Inc.,

Complainant,

vs.

Lawlor Motor Express, Inc.,
dba Package Delivery Express, and
DiSalvo Trucking Co.,

Defendants.

Case 84-03-10
(Filed March 28, 1984)

ORDER OF DISMISSAL

On March 28, 1984 Adams Delivery Service, Inc. (Adams) filed this complaint alleging that Lawlor Motor Express, Inc. dba Package Delivery Express (PDX) and DiSalvo Trucking Co. (DiSalvo) are violating certain provisions of Transition Tariff 2. The specific allegations are:

1. Handling of pool shipments without assessing pool shipment charges as prescribed in Transition Tariff #2 Item 176, 177, and 179.
2. Handling of shipments by two or more carriers and not assessing minimum charges as prescribed in Transition Tariff #2 Item #20.

On April 10, 1984 defendants filed their answer together with a motion to dismiss the complaint. The motion to dismiss alleges that the issues have previously been litigated in Case (C.) 11005 which resulted in Decision (D.) 82-09-041 in which the complaint was dismissed.

On June 28, 1984 the assigned Administrative Law Judge issued a ruling where Adams was required to submit a description of the evidence it intends to present to prove its allegations. In response to that ruling Adams submitted a list and brief description of the exhibits it intended to present. The list included the following exhibits:

Transition Tariff 2, Items 10, 11, 20, 110, 176, 177, 178, 179, and 1232

Commission decisions relating to Adams: D.85216, 86241, 86373, 88481, and 89084

Contract between Caltop and Adams for pool shipment distribution

Caltop letter cancelling transportation agreement

Caltop freight consolidation manifest

Undercharges Di Salvo/PDX/Caltop computed from May 1, 1981 to present

Letter dated February 24, 1984 signed by P. J. Trahan

Local Parcel Service, Inc. Tariff Filings filed August 1983 through May 1984 and rejected for lack of cost justification in handling of pool shipments

Lawlor Motor Express/Package Delivery Tariffs filed March and August 1981

Letter from Lawlor Motor Express to CPUC cancelling Lawlor's adoption notice of MRT tariffs

The response also stated in part:

"Adam as the complainant who has the burden of proof regarding the specific charges in this Complaint, will prove to this Commission without the shadow of doubt, that Lawlor and DiSalvo are indeed in violation as charged in our complaint and have been from May 1, 1981 to this date still in violation of this Commission's rules and regulations." (Emphasis added.)

It appears from the dates of the exhibits, the parties involved, and the explanations given with the listing that the transportation complained of here is the same transportation which was the subject of C.11005 and D.82-09-041. No new arguments have been advanced or new facts or changed circumstances alleged which would persuade us to reexamine this matter and change our decision.

Finding of Fact

The transportation complained of in C.84-03-10 is the same transportation involved in C.11005 which resulted in D.82-09-041.

Conclusion of Law

The issues in C.84-03-10 have been previously litigated and this complaint should be dismissed with prejudice.

IT IS ORDERED that C.84-03-10 is dismissed with prejudice.

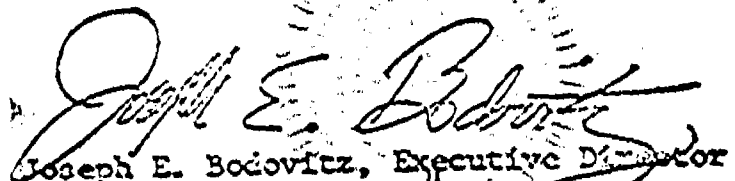
This order becomes effective 30 days from today.

Dated SEP 6 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
FRISCELLA C. CREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director

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