

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, charges, and practices of John S. Jenkins, an individual, doing business as Jenkins Trucking.

I-84-05-003
(Filed May 2, 1984)

John S. Jenkins, for himself, and Dee Lois Stewart, for John S. Jenkins, respondent.
Alberto Guerrero, Attorney at Law, and Paul Wuerstle, for the Commission staff.

O P I N I O N

This is an investigation into the trucking operations of John S. Jenkins, doing business as Jenkins Trucking, to determine whether he violated Public Utilities Code Sections 3575 and 3737, and the Commission's General Order (GO) 102-E by employing subhaulers without the bond on file required by Section 3575, by not having written agreements with subhaulers on file as required by Section 4a of GO 102-E, and by not paying subhaulers the sums due within 20 days of the last day of the calendar month in which the transportation was performed, as provided for in Item 210 of Minimum Rate Tariff (MRT) 7-A. This investigation was instituted after Jenkins denied a citation forfeiture issued by the Commission staff.

A hearing was held before Administrative Law Judge Fraser in San Francisco on June 11, 1984. Jenkins and the Commission staff presented evidence. No one appeared for the nine subhaulers involved. The matter was submitted on the date of hearing.

During the period under investigation, Jenkins operated out of a terminal in San Francisco as a certificated highway common carrier, and under permitted authority as a dump truck carrier, a heavy-specialized carrier, and a highway contract carrier. He has

three employees and operates 4 tractors, 4 end-dump trailers, and 1 flat-bed trailer. He subscribes to MRTs 7-A and 17-A, along with Directory 1. His gross operating revenue was \$67,478 in 1982 and \$169,112 in 1983 (Exhibit 1).

Staff Evidence

A staff representative testified and placed Exhibit 2 in evidence. This exhibit includes freight bills showing transportation performed by 6 subhaulers, as illustrated in the table on the following page. The exhibit has copies of billing invoices to the shipper and checks issued to pay subhaulers. The checks are all dated later than the twentieth day after the last day of the calendar month in which the transportation was performed (Item 210, MRT 7-A). Subhaulers Carl Burton, Jr., doing business as Burton & Son Trucking, Fred Lee Brown, doing business as Stone Trucking, and Herman Thorn, Jr., doing business as H & E Trucking, have been included in the exhibit, since photocopies of payment checks issued to these carriers are dated March 24, 1983, and all have a written notation on the face thereof, "for Feb Subhauls".

The table which follows provides the date on which the transportation was performed and identifies the subhauler and date of payment:

<u>Part No.</u>	<u>Date Transp. Performed</u>	<u>Freight Bill</u>	<u>Subhauler</u>	<u>Commodity</u>	<u>Check Pymt. Date</u>
1	12/28/82	8518	B and C Trucking	Sand	1/31/83
2	12/29/82	1103	John Bustillas Trucking	Sand	2/11/83
3	2/10/83	1541	Stone Trucking	Mud	3/24/83
4	2/11/83	1524	Vernon's Trucking	Mud	3/24/83
5	2/15/82	1553	Vernon's Trucking	Concrete and fill	3/24/83
6	2/15/83	1457	F.L. Grimes Trucking	Fill	3/24/83
7	2/15/83	37660	Rogers	Sand	3/25/83
8	2/16/83	1558	B and C	Not Shown	3/25/83
9	2/16/83	13477	F.L. Grimes	Sand	3/24/83
10	2/16/83	37661	Rogers	Sand	3/25/83
11	2/16/83	1559	Vernon's Trucking	Sand	3/24/83
12	2/17/83	1561	B and C	Sand	3/25/83
13	2/17/83	1576	Vernon's Trucking	Sand/ dirt	3/24/83
14	2/18/83	1562	B and C	Sand	3/25/83
15	2/18/82	1578	Vernon's Trucking	Sand/ dirt	3/24/83
16	2/22/83	8523	B and C	Sand	3/25/83
17	2/22/83	1581	Vernon's Trucking	Sand/ dirt	3/24/83
18	2/22/83	1637	Vernon's Trucking	Sand/ fill	3/24/83

The witness testified that carriers who employ subhaulers are required to have subhaul bonds, which are mailed to the Commission as soon as issued by the organization which provides the bond. The bonds are reviewed for accuracy and are placed in the

carrier's T-or transportation file. Jenkins' file has no subhaul bond. The witness stated that he reviewed all records provided by Jenkins on the transportation performed and found no written agreements with subhaulers as required by Section 4a of Commission's GO 102. The witness stated further that Jenkins admitted he had no subhaul bond and no subhaul agreements.

Respondent's Evidence

Jenkins and his wife testified for respondent. Jenkins stated that subhaulers will usually not execute subhaul agreements unless forced to do so; they will not fill in the forms, will not sign the agreement, and frequently will not even return the blank form. The prime carrier must transport the needed material to the job site. If all trucks were delayed until the executed subhaul agreements were turned over to the prime carrier, construction work would suffer due to a failure to deliver material on time.

Jenkins testified that he paid his subhaulers when he was paid. Large construction companies pay on a certain day every month and cannot be hurried without risking a loss of the business.

Jenkins noted that his wife holds operating authority from the Commission and she hires him as a subhauler. His friends and associates classify him as the prime carrier because he always drives the truck. His wife handles the office work and he never realized that he might need a bond and that one should be on file. No subhauler has even complained of a late payment, nor has he unreasonably delayed payment to subhaulers, after he is reimbursed for transportation performed.

Dee Stewart confirmed Jenkins' testimony. She hires him as a subhauler since she holds permitted authority and a highway common carrier certificate. She stated that she had a bond on file, but Commission's records indicated that she obtained the bond after this investigation was initiated.

Staff counsel recommended a \$500 fine under Section 3774 of the Public Utilities (PU) Code. Jenkins opposed the imposition of a fine, arguing that he is charged with a paper violation, an omission to observe a guideline imposed by the Commission.

Discussion

Fourteen of the eighteen freight bills listed in the 18 parts of Exhibit 2 are headed "Dee Stewart", with the same address as Jenkins Trucking Co. Jenkins is not mentioned on 8 of the bills; is named as consignor on two bills, and two others identify the merchandise as "coming from Jenkins". One freight bill is headed "John Jenkins Trucking", with the title written in ink. ✓

Information on the documents is sketchy, but it seems evident that Dee Stewart (Mrs. Jenkins) did the office work and Jenkins did the trucking. Jenkins has admitted being considered the prime carrier and that he did not have a subhaul bond. All subhaulers were paid by "John Jenkins Trucking" checks signed by either Jenkins or Dee Stewart.

The regulations concerning subhaul bonds, written agreements, and payment periods are for the protection of the transportation industry and the public. They are requirements of law or tariff which cannot be waived even when there are extenuating circumstances. \$500 is a reasonable fine, in view of Jenkins's \$169,000 gross income for 1983. It will serve as a reminder to observe all requirements in the future.

Findings of Fact

1. Respondent Jenkins has a highway common carrier certificate and permits authorizing operation as a dump truck carrier, a heavy-specialized carrier, and a highway contract carrier.
2. Jenkins employed subhaulers during the months of December 1982 and February 1983 without having a subhaul bond on file as required by Section 3575 of the PU Code.
3. All subhaulers were paid by "John Jenkins Trucking" checks, signed by either Jenkins or Dee Stewart.

4. While contracting for and performing this transportation, Jenkins failed to obtain and retain written agreements from his subhaulers concerning the transportation to be performed, as required by Section 4a of Commission's GO 102-E.

5. Jenkins did not pay the subhaulers within 20 days after the last day of the calendar month in which the transportation was performed, as required by Item 210 of MRT 7-A.

Conclusions of Law

1. Jenkins has violated Sections 3575 and 3737 of the PU Code by employing subhaulers without having a subhaul bond on file.

2. Jenkins violated Section 4a of Commission's GO 102-E and Section 3737 of the PU Code by failing to obtain and have written agreements with subhaulers on file.

3. Jenkins failed to pay the subhaulers he employed within 20 days after the last day of the month in which the transportation was performed, in violation of Item 210 of MRT 7-A, and PU Code Section 3737.

4. Jenkins should be required to pay a punitive fine of \$500 under the provisions of Section 3774 of the PU Code.

5. Jenkins should be ordered to cease and desist from unlawful operations or practices in the future.

O R D E R

IT IS ORDERED that:

1. John S. Jenkins shall pay a fine of \$500 to this Commission under the provisions of Section 3774 of the PU Code. The fine shall be paid within 40 days of the effective date of this order.

2. John S. Jenkins shall cease and desist from any and all unlawful operations and practices.

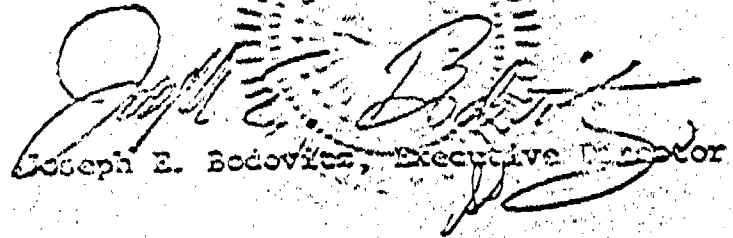
The Executive Director of the Commission is directed to cause personal service of this order to be made upon respondent John S. Jenkins.

This order becomes effective 30 days from today.

Dated NOV 7 1984, at San Francisco, California.

VICTOR CALVO
FRISCILLA 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

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