

Decision 90 05 055 MAY 22 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the released
value tariff provisions of certain
common carriers and an order to
show cause why such provisions
should not be cancelled.

ORIGINAL
I.89-04
(Filed April 12, 1989)

Respondents and Source Tariffs listed in
Appendix A.
Interested Parties listed in Appendix B.
John S. Wong, Attorney at Law, for the
Transportation Division.

O P I N I O N

On April 12, 1989 the following Order Instituting
Investigation (OII) was issued describing both the background and
the purpose of this proceeding.

"ORDER INSTITUTING INVESTIGATION

"In Application 60033 filed on October 27, 1980,
Western Motor Tariff Bureau, Inc. (WMTB), a
tariff publishing agent, applied as agent on
behalf of Pacific Motor Transport Trucking
Company (Transport) and Pacific Motor Trucking
Company (Trucking) to amend former WMT
Tariff 111 (superceded by WMT Tariff 170). In
its application, WMTB requested an increase in
charges to reflect the cost of transporting
high value merchandise or shipments of
extraordinary value. Item A 848-3 of the
tariff applicable to Transport and Trucking
contained the following released value
provisions:

"" (C) (1) Except as otherwise provided in
Subparagraph (2), the shipping
order or bill of lading shall be
annotated with a provision reading
substantially as follows: "Unless
a greater value is declared herein,

the shipper agrees and declares that the value of the property is released to a value not exceeding ... \$25.00 per pound per package."

"(2) In the event the shipper fails to annotate the shipping receipt or bill of lading in the manner set forth in Subparagraph (1), the property shall be deemed to have been released to a value not exceeding ... \$25.00 per pound per package."

"On February 18, 1981, the Commission issued Decision (D.) 92732 authorizing WMTB, on behalf of Transport and Trucking, to amend WMT Tariff 111 as proposed in its application.

"In August of 1987 the National Small Shipments Traffic Conference, Inc. and the Drug and Toilet Preparation Traffic Conference, Inc. (collectively 'Conference') filed a petition for modification of D.92732. The Conference requested in its petition that the Commission deny authority to publish the released value tariff provisions. WMTB, as the agent for Transport and Trucking, opposed the petition for modification.

"After a hearing on the petition for modification and submission of briefs, the Commission issued D.88-06-049. In that decision, the Commission found that Paragraph (C)(2) of Item 848-3 in WMT Tariff 170 was contrary to Civil Code § 2174,¹ and ordered that Transport and Trucking cancel their participation in the subject paragraph. The Commission also inserted a new subparagraph, (C)(3), to the tariff, but that subparagraph was subsequently deleted by the Commission in D.88-09-034.

¹ Civil Code § 2174 provides: 'The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.'

"D.88-09-034, which modified D.88-06-049 in response to applications for rehearing filed by WMTB and the Conference, succinctly stated the Commission's reasoning for cancelling Paragraph (C) (2):

"Paragraph (C) (2) automatically subjects the shipper to a released value of \$25.00 per pound per package if the shipper fails to annotate the shipping receipt or bill of lading as prescribed by Paragraph (C) (1). This is in contravention of [Civil Code] § 2174 which requires a special contract before a carrier may enjoy limited liability. Therefore, Paragraph (C) (2) is unlawful and should be cancelled."

"It has come to our attention after an inspection of common carrier tariffs that the common carriers listed in Appendix A have tariff provisions similar or identical to the released value provision that we cancelled in D.88-06-049, as modified by D.88-09-034."

"Therefore, good cause appearing,

"IT IS ORDERED that:

- "1. An investigation on the Commission's own motion is hereby instituted for the purpose of determining why the released value provisions contained in the tariffs of the respondents should not be ordered cancelled as being contrary to Civil Code § 2174.
- "2. The common carriers listed in Appendix A are made respondents to this investigation.
- "3. Respondents shall each file an original brief and 12 copies with the Docket Office within sixty (60) days from today's date to show cause why their released value tariff provisions listed in Appendix A should not be cancelled. The Transportation Division staff may file a reply to the respondents' briefs within 45 days

after the respondents' briefs are filed.

- "4. Respondents shall notify all other respondents that a copy of the brief will be sent upon request. A certification of this notification shall accompany the filed original and 12 copies.
- "5. The Executive Director shall cause a copy of this Order Instituting Investigation and Order to Show Cause to be served by certified mail to all respondents.

"This order is effective today.

"Dated April 12, 1989, at San Francisco, California."

Procedure

Responses having been filed by several of the respondents and interested parties, and Transportation Division (TD) having replied thereto, the Administrative Law Judge (ALJ) to whom this proceeding was referred requested additional comments from the parties in an effort to reach a consensus on the action the Commission should take in this matter.

The ALJ tentatively proposed that the Commission issue an order canceling the released value provisions contained in the tariffs of the respondents as contemplated in the order commencing the investigation.

Additional comments were filed by the parties following the ALJ's tentative proposal of August 14, 1989, including late-filed comments of Viking Freight System, Inc. (Viking), which we accept, and TD's response to those comments dated November 14, 1989, which we also accept.

I.89-04-015 is ready for decision.

Good Cause Not Shown

We find that none of the respondents has shown good cause why its released value tariff provisions listed in Appendix A should not be cancelled.

WMTB responded to the OII, on behalf of eighteen member respondents, advising the Commission that its members acquiesce to D.88-06-049, as modified by D.88-09-034. On June 5, 1989, WMTB issued Revised Page 141 to its Tariff WMT 170, CA PUC 51 which deleted Paragraph (C)(2) of Item 848-3 in WMT Tariff 170, as ordered by D.88-06-049.

Viking has also acquiesced to D.88-06-049, informing the Commission, by way of additional comments filed August 30, 1989, that it will revise VIKN Tariff 103-A, Item 407 to comply with our released value requirements.

Willig Freight Lines, Inc. (Willig), Peters Truck Lines, Inc., Con-Way Western Express, Inc. (Con-Way), and Viking submitted briefs in support of the proposition that the tariff of a common carrier constitutes a special contract between shipper and carrier and, hence, does not violate the provisions of Section 2174 of the Civil Code.

Respondents' legal argument and authorities were initially considered by the Commission in D.88-06-049, but we were nonetheless persuaded that the Civil Code does require that limitations of a common carrier's liability must appear in the carrier's bill of lading or shipping receipt.

In this proceeding, we expand the ambit of D.88-06-049 to include the listed respondents, and, as a matter of policy, we affirm our earlier holding that an ordinary member of the public who contracts for the services of a common carrier should be apprised of limitations of liability by simply reading the carrier's bill of lading.

Substantially Similar Provisions

We find that limitations of liability by respondent carriers cannot be achieved by automatic released value provisions in the carriers' tariffs, but may be established by the following tariff provision.

"The shipping order or bill of lading shall be annotated with a provision reading substantially as follows:

'Unless a greater value is declared herein, the shipper agrees and declares that the value of the property is released to a value not exceeding B \$30.00, C \$25.00 per pound per package.'

Both Willig and Viking proposed that the latter be slightly modified as follows to comport with the various limitations of liability set forth in the National Motor Freight classification and other governing tariffs:

"Unless a greater value is declared herein, the shipper agrees and declares that the value of the property is released to a value not exceeding \$25.00 per pound per package, except when otherwise provided in the current National Motor Freight Classification, ICC NMF 100 series, or this carrier's governing tariffs."

TD is not opposed to this modification, and we find it to be a provision reading substantially as the approved provision.

Shippers' Documentation

Several of the respondents express a concern that elimination of the automatic released value provision from their tariffs will create a problem for shippers who publish their own shipping documents.

TD comments on the issue as follows:

"Willig and Con-Way argue that the proposed order does not address the problem of shippers who ship shipments on their own bills of lading. However, these shippers who have their own preprinted bills of lading are likely to be sophisticated shippers dealing in high volumes.

They are or should be familiar with the tariffs of the carriers that they use since the shippers' bills of lading undoubtedly refer to the carrier's published tariffs as part of the terms and conditions of carriage. Since the shipper is using his own form, and referencing the published tariffs of the common carrier, the shipper should have intimate knowledge of the published tariffs of the carrier that he is using, including the tariff item that is being proposed in this case. Thus, the Transportation Division believes that the special contract requirement of Civil Code Section 2174 is met."

Further, TD suggests that, to ensure that shippers who use their own bills of lading will become aware of this new tariff item after its adoption, respondents should be required to send notice of the new item to this class of shippers. Certified mail was first suggested, and, after being apprised of the cost of such mailing, regular first class mail was proffered as an adequate means of notice.

We concur with TD's analysis that the special contract requirements of the Civil Code are satisfied where shippers provide their own preprinted bills of lading. However, in the absence of a compelling reason therefore, we will refrain from ordering respondents to provide notice to self-documenting shippers at this time. Instead, we will allow respondents to determine for themselves whether and how they will give notice of the tariff change to shippers publishing their own shipping documents.

Findings of Fact

1. D.88-06-049, as modified by D.88-09-034, ordered Pacific Motor Transport Company and Pacific Motor Trucking Company to cancel their participation in Paragraph (C)(2) of Item 848-3 of Western Motor Tariff Bureau, Inc. Tariff 170, CA PUC 51, which provided as follows:

- "(2) In the event the shipper fails to annotate the shipping receipt or bill of lading in the manner set forth in Subparagraph (1),

the property shall be deemed to have been released to a value not exceeding ... \$25.00 per pound per package."

2. The common carriers listed in Appendix A have or had tariff provisions similar or identical to the released value provision cancelled in D.88-06-049, as modified by D.88-09-034.

3. Good cause has not been shown by respondents why the released value provisions in the source tariffs listed in Appendix A should not be cancelled.

Conclusion of Law

Each respondent listed in Appendix A should be ordered to cancel its participation, if any, in Paragraph (C)(2) of Item 848-3 of Western Motor Tariff Bureau, Inc. Tariff 170, CA PUC 51, or in any similar or identical tariff provisions.

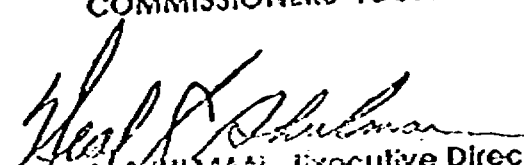
O R D E R

IT IS ORDERED that each respondent listed in Appendix A shall, within 30 days after the effective date of this order, cancel its participation, if any, in Paragraph (C)(2) of Item 848-3 of Western Motor Tariff Bureau, Inc. Tariff 170, CA PUC 51, or in any similar or identical tariff provisions.

This order becomes effective 30 days from today.

Dated MAY 22 1990 , at San Francisco, California.

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


NEAL J. SCHULMAN, Executive Director

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

I.89-04-015 /ALJ/WRI/jc
 I.89-04-015 L/ /lmz

APPENDIX A

| <u>Carrier</u> | <u>T-f</u> | <u>Source Tariff, Item #</u> |
|-------------------------------------|------------|------------------------------|
| A & B Transportation Services, Inc. | 39359 | WTB 170, I 848-3 |
| Brake Delivery Service - | | |
| Meier Transfer Service | 59800 | " |
| California Cartage Co., Inc. | 7487 | " |
| Condor Freight Lines | 108065 | " |
| Crescent Truck Lines, Inc. | 154407 | " |
| DiSalvo Trucking Company | 61078 | " |
| Giammona Transport & Leasing Co. | 138146 | " |
| J & J Truck Lines, Inc. | 69627 | " |
| JTX, Inc. | 117077 | " |
| Lightning Drayage Co., Inc. | 150427 | " |
| NFI, Inc. of California | 139681 | " |
| Pozas Brothers Trucking Co. | 55876 | " |
| Peters Truck Lines | 104856 | " |
| Paul's Trucking | 150570 | " |
| Reeves Transportation Co. | 159038 | " |
| S.C. Garment Delivery, Inc. | 156313 | " |
| Sterling Transit Co., Inc. | 26394 | " |
| Willig Freight Lines | 11501 | LFT 5-A, I 848 |
| Viking Freight System | 84649 | Trf 103, I 848 |
| Con-Way Western Express, Inc. | 140218 | PMTB 125, I 427 |
| Matheson Fast Freight, Inc. | 142777 | " |
| Special Dispatch of the Bay Area | 145301 | " |
| Ranger Transportation, Inc. | 149684 | RNGR 300, I 848-3 |
| Econo-Line Express, Inc. | 89081 | ECLN 500, I 848-3 |

APPENDIX A

THESE 24 COMMON CARRERS LISTED IN APPENDIX A OF THIS INVESTIGATION
ARE HEREBY NAMED RESPONDENTS.

T-39359

A & B TRANSPORTATION SERVICES, INC.
Vincent Punaro, President
2645 Nevin Avenue
Los Angeles, CA 90011

T-59800

BRAKE DELIVERY SERVICE
Meier Transfer Service
Duff Wertz, President
2626 East 26th Street
Los Angeles, CA 90058

T-7487

CALIFORNIA CARTAGE CO., INC.
J. Crawford, Treasurer
1450 East Hill Street
Long Beach, CA 90806

T-108065

CONDOR FREIGHT LINES, INC.
Robert J. Crites, President
4555 Pacific Boulevard
Los Angeles, CA 90058

T-140218

CON-WAY WESTERN EXPRESS, INC.
P. O. Box 4121
Portland, OR 97208

T-154407

CRESCENT TRUCK LINES, INC.
Frank J. Warn, President
2480 Whipple Road
Hayward, CA 94544

T-61078

DI SALVO TRUCKING CO.
C. E. Goacher, General Traffic Mgr.
P. O. Box 7970
San Francisco, CA 94120

T-89081

ECONO-LINE EXPRESS
Mack Vernon Jacobson, President
42600 Boyce Road
Fremont, CA 94538

T-138146

GIAMMONA TRANSPORT AND LEASING CO.
Joseph M. Giammona, President
1611 Autumn Way
Lodi, CA 95240

T-69627

J & J TRUCK LINE, INC.
Blair Johnson, Controller
P. O. Box 610697
San Jose, CA 95161

T-117077

JTX, INC.
John V. Tyler, President
211 Brannan Street
San Francisco, CA 94107

T-150427

LIGHTNING DRAYAGE CO., INC.
Robert Ciano, President
140 Hegenberger Loop
Oakland, CA 94621

APPENDIX A

T-142777

MATHESON FAST FREIGHT, INC.
102 East Walnut St.
Lodi, CA 95240

T-139681

NFI, INC. OF CALIFORNIA
Sidney Brown, President
2850 Loomis Road
Stockton, CA 95205

T-150750

PAUL'S TRUCKING
Paul Eugene Stornetta
1136 Hedgeside Avenue
Napa, CA 94558

T-104856

PETERS TRUCK LINES
Walter F. Peters, President
P. O. Box 218
Yreka, CA 96097

T-55876

POZAS BROS. TRUCKING CO.
Emile Pozas, President
P. O. Box 611480
San Jose, CA 95161

T-149684

RANGER TRANSPORTATION, INC.
R. Patrick Dietsch, President
P. O. Box 19060
Jacksonville, FL 32245

T-159038

REEVES TRANSPORTATION CO.
1300 Dews Pond Road NE
Calhoun, GA 30701

T-156313

S. C. GARMENT DELIVERY, INC.
875 W. 8th St.
Azusa, CA 91702

T-145301

SPECIAL DISPATCH OF THE BAY AREA
3602 Munster Unit E
Hayward, CA 94545

T-26394

STERLING TRANSIT CO., INC.
Orin Thorkildsen, President
Box 340
Montebello, CA 90640

T-84649

VIKING FREIGHT SYSTEM, INC.
Randolph C. Bangham, President
411 East Plumeria Drive
San Jose, CA 95134

T-11501

WILLIG FREIGHT LINES
123 Loomis Street
San Francisco, CA 94124

APPENDIX B

Daniel J. Sweeney, Esq.
National Small Shipments
Traffic Conference, Inc.
Drug and Toilet Preparation
Traffic Conference, Inc.
1750 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

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Western Motor Tariff Bureau, Inc.
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South Gate, CA 90280

ANN M. POUZIALES, Esq.
595 Market Street, Suite 1900
San Francisco, CA 94105

ROBERT S. GREITZ, Tariff Issuing Officer
Pacific Motor Tariff Bureau
P. O. Box 2276
San Leandro, CA 94577

RAY V. MITCHELL, President
Mitchell Traffic Service
2211 F San Ramon Valley Blvd.
San Ramon, CA 94583

T-27241

PACIFIC MOTOR TRANSPORT CO.
J. Angeli, President
1766 El Camino Real
Burlingame, CA 94010

T-14954

PACIFIC MOTOR TRUCKING CO.
R. J. O'Leary, Chairman
1766 El Camino Real
Burlingame, CA 94010